

AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF SEBASTOPOL, a municipal corporation (hereinafter referred to as "City"), and xxx, a California corporation, whose business address is xxx (hereinafter referred to as "Consultant"), is made with reference to the following:

RECITALS:

A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the City.

B. The City and Consultant desire to enter into an agreement for consultant services for [project name], pursuant to the xxx proposal dated xxx, attached as Exhibit A.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM:

The term of this Agreement shall commence on the \_\_\_\_\_, and shall terminate on the \_\_\_\_\_, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED BY CONSULTANT:

Consultant shall perform each and every service set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference.

From the effective date of this Agreement to the end of the contract, Consultant shall make monthly reports in such form as City may require to City concerning the status of the project.

3. COMPENSATION TO CONSULTANT:

Consultant shall be compensated for service performed pursuant to this Agreement in the total amount of xxx (xxx) unless otherwise approved in advance and in writing by the City. Invoices for work performed pursuant to the Agreement may be submitted on a monthly basis.

4. NOTICES:

All notices, demands, requests, or approvals to be given under this Agreement, shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Consultant to City shall be addressed to City at:

Sebastopol Planning Department  
7120 Bodega Avenue  
Sebastopol, CA 95472  
ATTN: Planning Director

All notices, demands, requests, or approvals from City to Consultant shall be addressed to Consultant at:

xxx Corporation  
[address]  
ATTN: xxx

5. INDEPENDENT CONSULTANT:

Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another.

Neither the City nor its officers or employees shall have any control over the conduct of Consultant or any of Consultant's employees, except as herein set forth.

6. INTEGRATED CONTRACT:

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written agreement signed by both City and Consultant.

7. COST OF LITIGATION:

If any legal action is necessary to enforce any provisions hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such an amount as the court may adjudge to be reasonable attorney's fees.

8. HOLD HARMLESS:

Consultant shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, and employees from and against any and all loss, damages,

liability, claims, suits, costs and expenses, whatsoever, including reasonable attorneys' fees, regardless of the merit or outcome of any claim or suit, arising from the negligent acts, omissions or willful misconduct of the Consultant in connection to the services or work conducted pursuant to this Agreement.

Consultant shall indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, agents and employees from and against any and all claims and losses whatsoever, including reasonable attorneys' fees, accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies to the extent caused by Consultant's negligent performance in connection with services or work conducted or performed pursuant to this Agreement and arising out of such negligent activities or work, and from any and all claims and losses whatsoever, including reasonable attorneys' fees, accruing or resulting to any person, firm or corporation for damage, injury or death arising out of Consultant's operations.

9. INSURANCE:

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, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 1187) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the consultant's profession.

#### Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage **including operations, products and completed operations, as applicable.** If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions liability: \$2,000,000 per occurrence.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees and volunteers** are to be covered as insureds as respects liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. The Workers Compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under terms of this policy which arise from the work performed by the named insured.
4. It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. **Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.**

#### Acceptability of Insurers

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

#### Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All original, signed certificates and endorsements are to be received and approved by the City prior to City's approval of the contract and commencement of work. The City reserves the right to require complete, certified copies of all required insurance policies,

including endorsements affecting the coverage required by these specifications at any time.

#### Subconsultants

Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Contract Documents. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of the contract indemnity and insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all sub-consultant to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

#### 10. PROHIBITION AGAINST TRANSFERS:

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of the City. Any attempt to do so without said consent shall be null and void, and any assignee, subleasee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate

member or cotenant, if Consultant is a partnership or joint venturer or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty (50) percent or more of the voting power of the corporation.

11. COUNTERPARTS:

This Agreement may be executed in several counterparts, each of which is an original, and all of which together constitute one and the same document.

12. PERMITS AND LICENSES:

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses and certificates that may be required in connection with the performance of services hereunder.

13. NON-DISCRIMINATION:

Consultant and Consultant's employees shall not discriminate because of sex, race, age, marital status, color, religion, ancestry, sexual orientation, national origin, AIDS, or handicap against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall Consultant or Consultant's employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage or any person because of sex, race, age, marital status, color, religion, ancestry, sexual orientation, national origin, AIDS, or handicap, all subject to reasonable orders of the City.

In the performance of this Agreement, Consultant shall not discriminate against any



employee or applicant for employment because of sex, race, age, marital status, color, religion, ancestry, sexual orientation, national origin, AIDS, or handicap. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, age, marital status, religion, color, ancestry, sexual orientation, national origin, AIDS, or handicap.

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.

Consultant shall permit access to Consultant's records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment, or any other agency of these State of California designated by the authority, for the purpose of investigation to ascertain compliance with this Section.

14. WAIVER:

A waiver by the City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

15. TERMINATION:

In the event Consultant hereto fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) days after receipt by Consultant from City of written notice of default, specifying the nature of such default

and the steps necessary to cure such default, City may terminate this Agreement forthwith giving the Consultant written notice thereof.

In the event that City duly notifies Consultant prior to completion of the project, that City wishes to cancel preparation of the work products require under this Agreement, City may terminate this Agreement forthwith by giving to the Consultant written notice thereof. City shall reimburse Consultant for costs and expenses incurred up to the cancellation date. This reimbursement shall be made within thirty (30) days of City receipt of Consultant invoices for costs and expenses incurred, and receipt of all work products produced up to the cancellation date.

16. REPORTS:

Consultant shall, at such time and in such form as the City may require, furnish reports concerning the status of services required under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and the year first above written.

CITY OF SEBASTOPOL,  
a municipal corporation

BY: \_\_\_\_\_

City Manager

CONSULTANT:  
XXXX

BY: \_\_\_\_\_

Xxxxx (Authorized agent)

EXAMPLE