



## **SONOMA COUNTY AGRICULTURAL PRESERVATION AND OPEN SPACE DISTRICT**

### **CONTRACT LAND ACQUISITION PROJECT MANAGEMENT Request for Proposals (RFP)**

The Sonoma County Agricultural Preservation and Open Space District (“District”) is pleased to invite you to respond to a Request for Proposals for Contract Land Acquisition Project Management. Proposals must be received no later than **5:00 p.m. on January 15, 2016**.

#### ***A. Introduction/Purpose***

##### **1. Project Background and Description**

The Sonoma County Agricultural Preservation and Open Space District, one of the nation’s leading open space conservation programs, is currently seeking Contract Land Acquisition Project Management support to work on and complete a range of acquisition projects and/or comprehensive planning assignments on an as-needed basis for up to three years.

The District permanently protects the diverse agricultural, natural resource, and scenic open space lands of Sonoma County for future generations. Created in 1990 by Sonoma County voters, the District has protected over 106,000 acres of land to date through conservation easements and outright purchase. The District is a county-wide dependent special district funded by a voter-approved quarter cent sales tax with the Board of Supervisors serving ex officio as the District Board of Directors. In 2006, voters reauthorized the sales tax for another 20 years through 2031. Learn more about the Sonoma County Agricultural Preservation and Open Space District at <http://www.sonomaopenspace.org/>.

##### **2. Desired Outcomes**

The goal is to contract with one or more individuals and/or one or more planning firms who would assign qualified staff for up to three years to complete real estate interest transactions and/or comprehensive planning assignments.

The selected individual and/or firm would work on between one and four projects at a time, with the goal of completing one to four acquisition projects each year, which would primarily be conservation easement transactions and fee title transfers. The selected individual and/or firm may also work on specific assignments related to a comprehensive planning process in which the District is currently engaged.

**B. Scope of Services**

To complete projects, the selected individual and/or firm will perform the following functions:

- Visit project properties;
- Draft acquisition or transfer documents, such as conservation easements, transfer agreements and recreation covenants from District templates;
- Obtain and coordinate internal staff and County Counsel review, revising documents as necessary;
- Negotiate acquisition documents with landowner;
- Write and distribute request for proposals for appraisers and review appraisers, and work with District administrative staff to execute contracts for appraisal work;
- Coordinate and write grant applications;
- Present projects to the District’s Fiscal Oversight Commission and Board of Directors;
- Coordinate with title companies and County Counsel to close escrow;
- Other tasks as needed, such as:
  - Conduct due diligence tasks such title research and contracting for survey work.
  - Present projects at other venues (e.g., District Advisory Committee).
- Conduct comprehensive planning assignments as needed

**C. Statement of Requirements**

The ideal selected individual and/or firm will provide staff that:

- a) Meet the following qualifications:
  - Bachelor's Degree, with major course work in planning, geography, environmental studies, resource management, community development, landscape architecture or other related fields.
  - Three years of professional planning experience in open space, parks, environmental protection, land use, community development or other related fields.
  - Possession of a valid driver's license at the appropriate level, including necessary special endorsements, as required by the State of California to perform the essential job functions of the position.
- b) Have the demonstrated experience, qualifications and expertise in:
  - Principles and practices of land use, natural resource management, agriculture, and CEQA;
  - Conservation easement design and/or interpretation;
  - Needs and interests related to natural resource, working landscapes, agricultural, and/or recreation-focused projects;
  - Real estate principles, including appraisals and title reports;
  - Grant writing; and
  - Computer applications for the preparation of research, reports and presentations;
- c) Have the demonstrated ability to perform the following services:

- Understand and interpret title reports, deed restrictions, CEQA guidelines, General Plan and zoning designations, and potential legal issues;
- Work with the principles of land use and/or conservation planning;
- Negotiate conservation easements and/or grant agreements to reach identified conservation outcomes;
- Strong writing, presentation, and public speaking skills.
- Strong organizational skills and attention to details;
- Work independently and also be a great team player.

**D. Local Preference**

It is the policy of the County and the District to promote employment and business opportunities for local residents and firms on all contracts and give preference to local residents, workers, businesses and consultants to the extent consistent with the law and interests of the public. A Local Service Provider is defined as a business or consultant who has a valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day basis, and holds a valid business license if required by a city within the jurisdiction of Sonoma County.

For quantitative evaluations of proposals, the locality of the service provider shall be included as an evaluation criterion in RFPs. Extra percentage weighting of 5% shall be provided in the total rating score for local service providers. For qualitative evaluations of proposals, Departments shall consider the locality of consultants or businesses and their sub-consultants along with other criteria identified in the RFP. If there is more than one service provider being considered and the providers are competitively matched in terms of other criteria, local service providers should be selected. If hiring sub-consultants, the District strongly encourages using local service providers.

More information about the District’s purchasing policies can be found on:

<http://www.sonoma-county.org/purchasing/selling.htm>

**E. Schedule**

The following schedule is subject to change. Except as provided below, changes will only be made by written amendment to this Request for Proposals, which amendment shall be issued to all parties by the District.

<u>Date</u>	<u>Event</u>
<b>December 11, 2015</b>	Release Request for Proposals
<b>December 21, 2015</b>	Deadline for Proposer’s Questions

<b>December 31, 2015</b>	District's Responses to Questions Due
<b>January 15, 2016</b>	Proposals Due
<b>February 5, 2016</b>	Proposals Evaluated by District
<b>February 16, 2016</b>	Interviews Conducted
<b>March 8, 2016</b>	Contract(s) Award Authorization <i>(subject to delay without notice to proposers)</i>

**F. Pre-Bid Conference**

Section Omitted.

**G. Questions**

Proposers will be required to submit any additional questions related to the RFP in writing before the close of business on **December 21, 2015** in order for staff to prepare written responses to all consultants. Written answers will be shared with all potential bidders. Questions are best received and most quickly responded to when sent via e-mail directly to "misti.arias@sonoma-county.org." Questions will not be accepted by phone.

**H. Corrections and Addenda**

1. If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the contact person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.
  
2. If a proposer fails to notify the contact person prior to the date fixed for submission of proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a proposal at his/her own risk, and if the proposer is awarded a contract, he/she shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.
  
3. Addenda issued by the District interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the proposal. The proposer shall submit the addenda cover sheet with the proposal (or deliver them to the Sonoma County Agricultural Preservation and Open Space District, 747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401 if the proposer has previously submitted a proposal to the District. Any oral communication by the District's designated contact person or any other

District or County staff member concerning this RFP is not binding on the District and shall in no way modify this RFP or any obligations arising hereunder.

**I. Proposal Submittal**

1. Form: Proposers must submit one (1) electronic copy, one (1) signed original, and one (1) copy of the signed proposal. Proposals must be enclosed in a sealed envelope or package and clearly marked "CONTRACT LAND ACQUISITION PROJECT MANAGEMENT". Proposals shall be submitted to:

Misti Arias at [misti.arias@sonoma-county.org](mailto:misti.arias@sonoma-county.org) and  
Sonoma County Agricultural Preservation and Open Space District,  
747 Mendocino Avenue, Suite 100, Santa Rosa, CA 95401

2. Due Date: Proposals must be received no later than **5:00 p.m. on January 15, 2016**. The proposal due date is subject to change. If the proposal due date is changed, all known recipients of the original RFP will be notified of the new date.
3. General Instructions: To receive consideration, proposals shall be made in accordance with the following general instructions:
  - a) The completed proposal shall be without alterations or erasures.
  - b) No oral or telephonic proposals will be considered.
  - c) The submission of a proposal shall be an indication that the proposer has investigated and satisfied him/herself as to the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the District, including all terms and conditions contained within this RFP.
4. Proposal Format and Contents: For ease of review and to facilitate evaluation, the proposals for this project should be organized and presented in the order requested as follows:

**a) Section I - Organizational Information:**

Provide specific information concerning the firm or individual in this section, including the legal name, address and telephone number of your company and the type of entity (sole proprietorship, partnership, or corporation and whether public or private). Include the name and telephone number of the person(s) in your company authorized to execute the proposed contract. If two or more firms are involved in a joint venture or association, the proposal must clearly delineate the respective areas of authority and responsibility of each party. All parties signing the Agreement with the District must be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.

Firm Description. Provide a description of the firm, number of years in business, and its core competencies. If proposing as an individual, provide a description of your experience, number of years in business and your core competencies.

Key Personnel. Identify the key personnel and their back-ups that will be assigned to the program. Include resumes for each person, listing all employers and positions held within the last ten years.

**b) Section II - Qualifications and Experience:**

Provide specific information in this section concerning the individual and/or firm's experience in the services specified in this RFP, preferably within the State of California. Examples of completed projects, as current as possible, should be submitted, as appropriate. **References are required.** Please provide names, addresses, and telephone numbers of contact persons within three (3) client agencies or organizations for whom similar services have been provided.

Debarment or Other Disqualification. Proposer must disclose any debarment or other disqualification as a vendor for any federal, state or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find such detailed information

**c) Section III - Project Approach and Work Schedule:**

Provide a description of the methodology developed to perform all required services, with a schedule that contains specific milestones achieved per quarter. Also identify the extent of District personnel involvement deemed necessary, including key decision points at each stage of the project. Information as to the type of any software that is anticipated to be used in the planning process should also be discussed.

Include your response to the Statement of Requirements listed in Section C.

**d) Section IV - Cost of Service:**

The proposal shall clearly state ALL of the costs associated with the project, broken out to include all expenses that will be charged to the District, including but not limited to, hourly rates for labor, shipping, insurance, communications, documentation reproduction, and all expenses, including travel, etc. Failure to clearly identify all costs associated with the proposal may be cause for rejection of the Consultant's proposal.

The contract(s) will be based on a time and materials basis in an amount not to exceed \$150,000 in total.

**e) Section V – Identification of Subcontractors:**

Proposers shall identify all subcontractors they intend to use for the proposed scope of work. For each subcontractor listed, proposers shall indicate (1) what products and/or services are to be supplied by that subcontractor and, (2) what percentage of the overall scope of work that subcontractor will perform.

**f) Section VI - Insurance:**

The selected proposer will be required to submit and comply with all insurance as described in the Sample Agreement (Attachment A). Securing this insurance is a condition of award for this contract.

**g) Section VI – Writing Sample:**

Proposers shall submit a writing sample, such as an excerpt from a conservation easement negotiated and/or drafted by the individual or firm.

**h) Section VII - Additional Information:**

Include any other information you believe to be pertinent but not required.

**i) Section VIII – Contract Terms:**

Proposers must include a statement acknowledging their willingness to accept the sample contract terms (Attachment A) or identify specific exceptions to the sample agreement.

**J. Selection Process**

1. All proposals received by the specified deadline will be reviewed by the District for content, including but not limited to fee, related experience and professional qualifications of the bidding consultants.
2. District and County employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a proposal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or business entity submitting a proposal who has such a relationship with a District or County employee who may be involved in the selection process shall advise the District of the name of the District or County employee in the proposal.
3. Proposals will be evaluated using the following criteria (note that there is no value or ranking implied in the order of this list):
  - a) Demonstrated ability to perform the services described;
  - b) Experience, qualifications and expertise;
  - c) Quality of the proposal;
  - d) Quality of work as verified by references;

- e) Costs relative to the scope of services;
  - f) A demonstrated history of providing similar services to comparable entities;
  - g) Willingness to accept the District's contract terms;
  - h) The locality of the Proposer; and
  - i) Any other factors the evaluation committee deems relevant.
4. The District's General Manager reserves the right, in his sole discretion, to take any of the following actions at any time before Board approval of an award: waive informalities or minor irregularities in any proposals received, reject any and all proposals, cancel the RFP, or modify and re-issue the RFP. Failure to furnish all information requested or to follow the format requested herein may disqualify the proposer, in the sole discretion of the District. False, incomplete, misleading or unresponsive statements in a proposal may also be sufficient cause for a proposal's rejection.
  5. The District may, during the evaluation process, request from any proposer additional information which the District deems necessary to determine the proposer's ability to perform the required services. If such information is requested, the proposer shall be permitted three (3) business days to submit the information requested.
  6. An error in the proposal may cause the rejection of that proposal; however, the District may, in its sole discretion, retain the proposal and make certain corrections. In determining if a correction will be made, the District will consider the conformance of the proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP. If the proposer's intent is clearly established based on review of the complete proposal submittal, the District may, at its sole option, correct an error based on that established content. The District may also correct obvious clerical errors. The District may also request clarification from a proposer on any item in a proposal that District believes to be in error.
  7. The District reserves the right to select the proposal or proposals which in its sole judgment best meet(s) the needs of the District. ***The lowest proposed cost is not the sole criterion for recommending contract award.***
  8. All proposers responding to this RFP will be notified of their selection or non-selection after the evaluation committee has completed the selection process.
  9. Generally, the proposer(s) selected by the Evaluation Committee will be recommended to the District's Board of Directors for this project, but the Board is not bound to accept the recommendation or award the contract to the recommended proposer.



**K. Finalist Interviews**

After initial screening, the evaluation committee may select those proposers deemed most qualified for this project for further evaluation. Interviews of these selected proposers may be conducted as part of the final selection process. Interviews may or may not have their own separate scoring during the evaluation process.

**L. General Information**

1. Rules and Regulations

- a) The issuance of this solicitation does not constitute an award commitment on the part of the District, and the District shall not pay for costs incurred in the preparation or submission of proposals. All costs and expenses associated with the preparation of this proposal shall be borne by the proposer.
- b) The District reserves the right to reject any or all proposals or portions thereof if the District determines that it is in the best interest of the District to do so.
- c) The District may waive any deviation in a proposal. The District's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful proposer from full compliance with any resultant agreement requirements or obligations. The District reserves the right to reject any or all proposals, or to waive any defect or irregularity in a proposal. The District further reserves the right to award the agreement to the proposer or proposers that, in the District's judgment, best serves the needs of the District.
- d) All proposers submit their proposals to the District with the understanding that the recommended selection of the review committee is final and subject only to review and final approval by the General Manager (via delegation), or the Board of Directors.
- e) Upon submission, all proposals shall be treated as confidential documents until the selection process is completed. Once the notice of intent to award is issued by the District, all proposals shall be deemed public record. In the event that a proposer desires to claim portions of its proposal exempt from disclosure, it is incumbent upon the proposer to clearly identify those portions with the word "Confidential" printed on the top right hand corner of each page for which such privilege is claimed, and to clearly identify the information claimed confidential by highlighting, underlining, or bracketing it, etc. Examples of confidential materials include trade secrets. Each page shall be clearly marked and readily separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. The District will consider a proposer's request for exemptions from disclosure; however, the District will make its decision based upon applicable laws. An assertion by a proposer that the entire proposal, large portions of the proposal,

or a significant element of the proposal, are exempt from disclosure will not be honored and the proposal may be rejected as non-responsive. Prices, makes and models or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary.

- f) The District will endeavor to restrict distribution of material designated as confidential to only those individuals involved in the review and analysis of the proposals. Proposers are cautioned that materials designated as confidential may nevertheless be subject to disclosure. Proposers are advised that the District does not wish to receive confidential or proprietary information and those proposers are not to supply such information except when it is absolutely necessary. If any information or materials in any proposal submitted are labeled confidential or proprietary, the proposal shall include the following clause:
  - a. [Legal name of proposer] shall indemnify, defend and hold harmless the Sonoma County Agricultural Preservation and Open Space District, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §6250 et seq.) Arising out of, concerning or in any way involving any materials or information in this proposal that [legal name of proposer] has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.

## 2. Nonliability of District

The County shall not be liable for any precontractual expenses incurred by the proposer or selected contractor or contractors. The District shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

## 3. Proposal Alternatives

Proposers may not take exception or make material alterations to any requirement of the RFP. Alternatives to the RFP may be submitted as separate proposals and so noted on the cover of the proposal. The District reserves the right to consider such alternative proposals, and to award an agreement based thereon if it is determined to be in the District's best interest and such proposal satisfies all minimum qualifications specified in the RFP. Please indicate clearly in the proposal that the proposal offers an alternative to the RFP.

## 4. Lobbying

Any party submitting a proposal or a party representing a proposer shall not influence or attempt to influence any member of the selection committee, any member of the Board of Supervisors, or any employee of the District or of the County of Sonoma, with regard to the acceptance of a proposal. Any party attempting to influence the RFP process through ex-parte contact may be subject to rejection of their proposal.

5. Form of Agreement

- a) No agreement with the District shall have any effect until a contract has been signed by both parties. Pursuant to Sonoma County Code Section 1-11, District personnel are without authorization to waive or modify agreement requirements.
- b) A sample of the agreement is included as Attachment A hereto. Proposers must be willing to provide the required insurance and accept the terms of this sample agreement. With few exceptions, the terms of the District's standard agreement will not be negotiated. Indemnification language will not be negotiated.
- c) Proposals submitted shall include a statement that (i) the proposer has reviewed the sample agreement and will agree to the terms contained therein if selected, or (ii) all terms and conditions are acceptable to the proposer except as noted specifically in the proposal. A proposer taking exception to the District's sample agreement must also provide alternative language for those provisions considered objectionable to the proposer. Please note that any exceptions or changes requested to the Agreement may constitute grounds to reject the proposal.
- d) Failure to address exceptions to the sample agreement in your proposal will be construed as acceptance of all terms and conditions contained therein.
- e) Submission of additional contract exceptions after the proposal submission deadline may result in rejection of the consultant's proposal.

6. Duration of Proposal; Cancellation of Awards; Time of the Essence

- a) All proposals will remain in effect and shall be legally binding for at least ninety (90) days.
- b) Unless otherwise authorized by District, the selected consultant will be required to execute an agreement with the District for the services requested within sixty (60) days of the District's notice of intent to award. If agreement on terms and conditions acceptable to the District cannot be achieved within that timeframe, or if, after reasonable attempts to negotiate such terms and conditions, it appears that an agreement will not be possible, as determined at the sole discretion of the District, the District reserves the right to retract any notice of intent to award and proceed with awards to other consultants, or not award at all.

7. Withdrawal and Submission of Modified Proposal

- a) A proposer may withdraw a proposal at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the proposer or his/her

authorized agent. Another proposal may be submitted prior to the deadline. A proposal may not be changed after the designated deadline for submission of proposals.

***M. Protest Process***

Any and all protests must be in writing and must comply with the timelines and procedures set forth at: <http://www.sonoma-county.org/purchasing/selling.htm>.

**Attachments:**

Attachment A: Sample Agreement

Attachment B: Local Business Declaration for Services

## AGREEMENT FOR CONSULTING SERVICES

This agreement ("Agreement"), dated as of \_\_\_\_\_, 20\_\_ ("Effective Date") is by and between the Sonoma County Agricultural Preservation and Open Space District, a California special district, (hereinafter "District"), and \_\_\_\_\_ (hereinafter "Consultant").

### R E C I T A L S

WHEREAS, Consultant represents that it is a duly qualified \_\_\_\_\_, experienced in the preparation of \_\_\_\_\_ and related services; and

WHEREAS, in the judgment of the General Manager of the District, it is necessary and desirable to employ the services of Consultant for \_\_\_\_\_.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

### A G R E E M E N T

#### I. Scope of Services.

##### 1.1 Consultant's Specified Services.

Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control.

1.2 Cooperation with District. Consultant shall cooperate with District staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by District shall not operate as a waiver or release. If District determines that any of Consultant's work is not in accordance with such level of competency and standard of care, District, in its sole discretion, shall have the right to do any or all of the following: (a) require

Consultant to meet with District to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time District, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from District.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by District to be key personnel whose services were a material inducement to District to enter into this Agreement, and without whose services District would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of District. With respect to performance under this Agreement, Consultant shall employ the following key personnel: \_\_\_\_\_.
- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. Payment. Consultant shall be paid on a time and material/expense basis in accordance with the budget set forth below, provided, however, that total payments to Consultant shall not exceed \$ \_\_\_\_\_, without the prior written approval of District. Consultant shall submit its bills in arrears on a monthly basis in a form approved by the District's General Manager or designee. Expenses not expressly authorized by the Agreement shall not be reimbursed.

The invoices shall show or include, at a minimum, the following information:

- Consultant Name
- Name of Project
- District Contract Number
- Copies of all subconsultant/subcontractor invoices, if any
- Description of services performed
- Copies of receipts for reimbursable materials/expenses, if any,
- Any other information requested by the District

Unless otherwise noted in this agreement, payments shall be made within the normal course of District business after presentation of an invoice in a form approved by the District for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the District in its sole discretion.

Pursuant to California Revenue and Taxation Code Section 18662, the District shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify as any of the foregoing, District requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified as any of the foregoing, then the District requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts contained therein. By signing Form 587 or Form 590, the Consultant agrees to promptly notify the District in writing of any changes in the facts contained therein. Forms shall be sent to the District pursuant to Section 12. To reduce the amount withheld, Consultant shall provide District with a determination letter from the State of California expressly allowing reduced withholding.

3. Term of Agreement. The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_ unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, District shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, District may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to District all materials and work product subject to Section 9.10 (Ownership and Disclosure of Work Product) and shall submit to District an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment upon Termination. Upon termination of this Agreement by District, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if District terminates the Agreement for cause pursuant to Section 4.2, District shall deduct from such amount the amount of damage, if any, sustained by District by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. The District's Board of Directors has the authority to terminate this Agreement on behalf of the District. In addition, the District's General Manager, in consultation with District Counsel, shall have the authority to terminate this Agreement on behalf of the District.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including District, and to indemnify, hold harmless, and release District, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against District based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on District's part, but to the extent required by law, excluding liability due to District's conduct. District shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.



6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the District's General Manager or designee in a form approved by District Counsel. The District's Board of Directors must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, District personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the District.

9. Representations of Consultant.

9.1 Standard of Care. District has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by District shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of District and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits District provides its employees. In the event District exercises its right to terminate

this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold District harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case District is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish District with proof of payment of taxes on these earnings.

9.4 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to District for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.5 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by District, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with District disclosing Consultant's or such other person's financial interests.

9.6 Statutory Compliance. Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

9.7 Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the District's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.8 AIDS Discrimination. Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.9 Assignment of Rights. Consultant assigns to District all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to District in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as District may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of District. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of District.

9.10 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of District. District shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to District all such documents, which have not already been provided to District in such form or format, as District deems appropriate. Such documents shall be and will remain the property of District without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of District.

9.11 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not

exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits District's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO DISTRICT: Sonoma County Agricultural Preservation  
and Open Space District  
747 Mendocino Avenue  
Santa Rosa, CA 95401  
Phone: 707-565-7366  
Fax: 707-565-7359

Invoices may be emailed to: [aposed-accounts.payable@sonoma-county.org](mailto:aposed-accounts.payable@sonoma-county.org)

TO CONSULTANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by District of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and District acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and District acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT

SONOMA COUNTY AGRICULTURAL  
PRESERVATION AND OPEN SPACE DISTRICT

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

By: \_\_\_\_\_  
William J. Keene, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO SUBSTANCE FOR  
DISTRICT:

APPROVED AS TO FORM FOR DISTRICT:

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CERTIFICATES OF INSURANCE ON  
FILE WITH THE DISTRICT

By: \_\_\_\_\_  
Administrative Aide

Date: \_\_\_\_\_

## SONOMA COUNTY AGRICULTURAL PRESERVATION

### AND OPEN SPACE DISTRICT

#### INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

District reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

#### 1. Workers Compensation and Employers Liability Insurance

- a. Required if Consultant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Consultant currently has no employees as defined by the Labor Code of the State of California, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

#### 2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, District requires and shall be entitled to coverage for the higher limits maintained by Consultant.

- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District. Consultant is responsible for any deductible or self-insured retention and shall fund it upon District's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the District.
- d. Sonoma County Agricultural Preservation and Open Space District, its officers, agents, and employees shall be additional insureds for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h. Required Evidence of Insurance:
  - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
  - ii. Certificate of Insurance.

### 3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by District.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided



by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- e. Required Evidence of Insurance: Certificate of Insurance.

## 5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

## 6. Documentation

- a. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with District for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- b. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Agricultural Preservation and Open Space District, its officers, agents, and employees, 747 Mendocino Avenue, Santa Rosa, CA 95401.
- c. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- d. 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; or (3) the deductible or self-insured retention is increased.
- e. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

## 7. Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## 8. Material Breach

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. District, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, District may purchase the required insurance, and without further notice to Consultant, District may deduct from sums due to Consultant any premium costs advanced by District for such insurance. These remedies shall be in addition to any other remedies available to District.

Sonoma County Agricultural Preservation  
and Open Space District

**LOCAL PREFERENCE POLICY**

Sonoma County Agricultural Preservation and Open Space District gives local businesses a preference in formal solicitations of services as set forth in the County of Sonoma Local Preference Policy for Services.

In order to qualify for this preference, a business must meet *all* of the following criteria:

1. For businesses with a location in a city within Sonoma County, a valid business license if required by the city; and
2. A valid physical address located within Sonoma County from which the vendor or consultant operates or performs business on a day-to-day basis.

By completing and signing this form, the undersigned states that, under penalty of perjury, the statements provided herein are true and correct and that the business meets the definition of a local business as set forth in the County of Sonoma Local Preference Policy for Goods.

All information submitted is subject to investigation as well as disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid not being considered for application of the County's local preference policy. False or dishonest responses will cause the rejection of the bid and curtail the declarant's ability to conduct business with the County in the future. It may also result in legal action.

1. Legal name of business: \_\_\_\_\_

2. Physical address of the principal place of business.

\_\_\_\_\_  
\_\_\_\_\_

3. Business license issued by incorporated city within the County:

License Number \_\_\_\_\_ Issued by: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_  
\_\_\_\_\_