

City of St. Helena



REQUEST FOR PROPOSALS FOR FORENSIC ACCOUNTING SERVICES

Issued: January 29, 2016

Responses Due: February 26, 2016

All responses must be sent to:

Cindy Black, City Clerk
1480 Main Street
St. Helena, CA 94574

CITY OF ST. HELENA, CALIFORNIA
REQUEST FOR PROPOSAL FOR FORENSIC ACCOUNTING SERVICES

Table of Contents

PART 1 – FORENSIC ACCOUNTANT SPECIFICATIONS 3

I. INTRODUCTION 3

II. DESCRIPTION OF THE CITY 3

III. SCOPE OF WORK TO BE PERFORMED 5

 A. Services to be performed by Forensic Accountant. 5

 B. Timeline Requirements 6

 C. Reporting and Communication 6

 D. Other Considerations..... 6

IV. CITY RESPONSIBILITIES 7

 A. City Staff 7

 B. Report Preparation 7

V. BASIS FOR COMPENSATION 8

VI. ADDITIONAL PROVISIONS 8

VII. SPECIAL TERMS AND CONDITIONS 8

PART 2 – PROPOSAL REQUIREMENTS AND INFORMATION 10

I. PROPOSAL PROCESS AND CALENDAR 10

 A. Distribution of Proposals 10

 B. Proposal Submission 10

 C. Proposal Review and Notification 10

 D. Interviews..... 10

 E. Final Selection and Notification..... 10

II. PROPOSAL REQUIREMENTS 11

 A. Independence 102

 B. License to Practice in California..... 102

C. Firm Qualifications and Experience	102
D. Partner, Supervisor, and Staff Qualifications and Experience	103
E. Specific Forensic accounting Approach	12
G. Total All-Inclusive Maximum Price.....	12
H. Rates by Partner, Supervisor, and Staff Level Times Hours Anticipated for Each	13
I. Ownership of City-Related Documents	13
J. Acceptance of Proposal Contents.....	13
K. Acceptance or Rejection and Negotiation of Proposals	13
III. EVALUATION PROCESS	14
IV. FORMAT AND CONTENT OF PROPOSAL.....	15
A. Title Page.....	15
B. Table of Contents	15
C. Letter of Transmittal.....	15
D. Forensic accounting Team	15
E. Forensic accounting Scope and Provisions	16
F. Cost Data.....	16
G. Additional Data	16

Appendices

- A. Format for Schedule of Professional Fees and Expenses to Support the Total All-Inclusive Maximum Price
- B. Sample Copy of City’s “Professional Services Agreement”

PART 1 – FORENSIC ACCOUNTING SPECIFICATIONS

I. INTRODUCTION

The City of St. Helena (hereinafter referred to as “the City”) is requesting proposals from qualified firms with a certified forensic accountant/fraud examiner to audit the City’s \$37.6 million Comprehensive Flood Control Project (hereinafter referred to as “the Project”)

During the evaluation process, the City reserves the right, where it may serve the City’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. Submission of a proposal indicates acceptance by the Firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of St. Helena and the Firm selected.

To be considered, three (3) original copies and one (1) electronic copy provided on CD or flash drive must be received at the City of St. Helena, City Clerk’s Office, 1480 Main Street, St. Helena, CA 94574, no **later than 5:00 pm February 26, 2016**. Failure to provide the required number of copies in the requested format may render your proposal as non-compliant. It is anticipated that the selected firm will be notified no later than the week of **March 22, 2016**. A copy of this request for proposal can be found on the City’s website: www.cityofsthelena.org.

All questions relating to this Request for Proposal should be submitted in writing by Friday, February 12, 2016 to:

Jennifer Phillips
City Manager
City of St. Helena
1480 Main Street
St. Helena, CA 94574
jphillips@cityofsthelena.org

All responses to questions and RFP revisions will be available on the City’s website: www.cityofsthelena.org.

II. DESCRIPTION OF THE CITY

The area was settled in 1834 as part of General Vallejo’s land grant and The City of St. Helena was incorporated as a City on March 24, 1876 and reincorporated on May 14, 1889. The City is located in the center of Napa Valley in Northern California and considered to be one of the premier wine producing regions of the United States. The area is renowned for its abundance of vineyards and wineries of national reputation. The City of St. Helena has several luxury lodging establishments, fine restaurants, and an attractive and enjoyable small community environment nestled among the hills of Napa Valley, in the heart of Wine Country. The City is home to approximately 6,000

individuals; however, on any given day, that population can increase by as much as 20 percent due to the number of lodging establishments located in the City and the frequency with which the City is visited by individuals from around the world.

The City operates under a council-manager form of government. Policy making and legislative authority are vested in the City Council consisting of the Mayor and four other elected Council members. The City Council is responsible, among other matters for passing ordinances, adopting the City budget, appointing committees, and hiring the City Manager. The City Manager is responsible for carrying out the policies and ordinances of the City Council, for managing the daily operations of the City, and for appointing other employees. The Council is elected to four year staggered terms, with two members elected every two years. The Mayor is elected to serve a two year term.

The City provides a full range of municipal services including fire and police protection; construction and maintenance of City streets, storm drains, bridges, and similar infrastructure type assets; park maintenance; community recreation activities; building inspections; licenses and permits; and public library services and facilities. In terms of business-type activities, the City provides water and wastewater services through the operation of its utility enterprises.

The City's fiscal year is July 1 through June 30. The City's fund structure currently includes: General Fund, Special Revenue Funds, Capital Funds, and Proprietary (Enterprise) Funds. The City's adopted budget for FY 2015/16 is \$18.1 million, excluding capital projects and transfers. The General Fund budget is \$9.9 million, not including transfers.

The City's financial statements are prepared in compliance with GASB and in conformance with requirements of the GFOA Certificate of Achievement for Excellence in Financial Reporting. The City uses Springbrook financial software for general ledger, cash receipts, accounts receivable, utility billing, accounts payable, payroll, purchasing, project management and budgeting. The City previously used MOM financial software from Corbin Willits Systems.

In the late 1990's, looking to reduce the likelihood of severe flooding of vulnerable properties, City staff began a planning process with the intent to receive a Letter of Map Revision (LOMR) from the Federal Emergency Management Agency (FEMA) for areas along the Napa River near Sulphur Creek. This initiative resulted in a \$37.6 million Comprehensive Flood Control Project. Although most the work on these projects has been completed and the LOMR issued, financial and contractual obligations remain open. Following a deobligation of \$1.9 million to FEMA in February 2014, the new city management team in early 2015 researched the events that lead to the deobligation. The results of the research were presented to the City Council on April 14, 2015 (staff report is incorrectly dated April 10, 2015). Staff report can be found at this link:

http://www.ci.st-helena.ca.us/sites/default/files/18_3.pdf

Following this initial review, the City hired an experienced Grants Manager and

conducted an internal review of the Project. This effort culminated in a report to the St Helena City Council identifying contractual compliance issues with at least two funding agencies and apparent weaknesses in grant and accounting practices. Staff report can be found at this link:

<http://www.ci.st-helena.ca.us/sites/default/files/16.complete%20reduced.pdf>

III. SCOPE OF WORK TO BE PERFORMED

A. Services to be performed by Forensic Accountant.

1. In general, the forensic accountant will perform a financial and compliance review of the Comprehensive Flood Control Project (Project) to determine whether: (a) revenues were expended appropriately and for expenses related to the Project; (b) financial records provide for reporting on the Flood Control Project in accordance with applicable generally accepted accounting principles, and grant agreements; (c) contracts were awarded properly and for work related to the Project; and (d) the City has complied with laws and regulations that may have a material effect upon the City's financial statements and grant contracts and reporting requirements.
2. The forensic accountant will examine the City's internal accounting, contract, grant management and purchasing controls and related procedures and render written reports of their findings and recommendations to the City Manager. The examination shall be made and reports rendered in accordance with generally accepted government accounting standards. In addition, the forensic accountant shall communicate to the City Manager and Finance Director any reportable conditions found during the forensic audit that can be defined as either a significant or material weakness in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statement or grant report.
3. Forensic accountant shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the Finance Director and City Manager.
4. Forensic accountant shall audit the "Measure A Budget Worksheet" Fund 235 and prior funds used for flood control accounting in a replaced system funds 34 and 35.
5. Forensic accountant shall submit a final report setting forth their findings and/or recommendations on those matters noted and observed during the conduct of the examination of the financial records and developed within the scope usually associated with such an examination relating to, but not limited to, a) improvement in systems of internal control, b) improvement in

accounting systems, c) improvements in grant management; d) apparent noncompliance with laws, rules, and regulations, and e) any other material matters coming to the attention of the firm during the conduct of the examination.

B. Timeline Requirements

1. Forensic accountant shall schedule field work and agreed upon deadlines with the City Manager.
2. The entrance conference, progress reporting, and exit conference should be held within the time frames indicated on the schedule shown below:

a.	Entrance Conference with City Manager and key Finance Department staff to discuss work to be performed, establish overall liaison for forensic accounting and arrangements for work space and other needs of the forensic accountant.	Prior to start of forensic accounting field work
b.	Progress conference with City Manager and key Finance staff to review progress on the audit	Midway through forensic accounting fieldwork
c.	Exit Conference with City Manager and key Finance staff to summarize the results of the field work and to review significant findings	At the conclusion of the forensic accounting field work

C. Reporting and Communication

1. The forensic accountant will meet during the on-site field work process with the City Manager and Finance Director to discuss issues, concerns, preliminary forensic accounting findings and management recommendations.
2. Prior to issuing a final report, the forensic accountant will meet with the City Manager and Finance Director with a draft forensic accounting report to be addressed to the City Council.
3. The forensic accountant shall issue a final report and present findings at a mutually agreed upon City Council meeting.

D. Other Considerations

1. All working papers, reports, and records relating to the work performed under the Professional Services Agreement must be retained, at the forensic accountant's expense, for a minimum of five (5) years, unless the Firm is notified in writing by the City of St. Helena of the need to extend the retention period.
2. The forensic accountant will be required to make working papers available upon request to the appropriate parties. In addition, the Firm shall respond to the reasonable inquiries of successor forensic accountant and allow review of working papers relating to matters of continuing accounting significance.
3. The forensic accountant will be required to attend a City Council meeting to present the final report and answer any questions the Council may have regarding the report, findings and recommendations.
4. The forensic accountant will cooperate and/or participate in law enforcement investigative actions and/or related civil asset recovery actions, if needed, Any added scope of work related to these matters will be compensated in accordance with section V – A of this agreement.

IV. CITY RESPONSIBILITIES

A. Finance Staff

1. City staff has assembled nearly 99% of all the documentation in its possession related to the Project. All available documentation will be made available and staff will endeavor to assist the forensic accountant in locating any additional records or backup documentation. All requests from the forensic accountant will be directed to the City Manager or Finance Director.
2. Finance staff will provide the forensic accountant with reasonable workspace to include desks and chairs as well as access to internet and photocopying and fax machines.

B. Report Preparation

1. The forensic accountant will prepare the draft and final versions of the report.
2. Final preparation and printing of the report will be the responsibility of the forensic accountant.

V. BASIS FOR COMPENSATION

- A. The City will pay the forensic accountant for the services described in Part I, Section III (Scope of Work to be Performed) that do not exceed the amount contained within an executed Professional Services Agreement between the City and the Firm. For additional services required after the inception of the Agreement, written approval by the City shall be required in advance of such services being rendered. The fee for such services shall be paid based on the forensic accountant's quoted hourly rates.

VI. ADDITIONAL PROVISIONS

- A. Upon notice of intent to award contract, the successful contractor shall enter into a Professional Services Agreement with the City of St. Helena.
- B. No officer, agent, or employee of the City and no member of its governing bodies shall have any financial interest, direct or indirect, in this agreement or the proceeds thereof. No officer, agent, or employee of the forensic accountant shall serve on a City committee or hold any such position which is incompatible with such person's duties or obligations or other relationship to this agreement.
- C. Time is of the essence in each and all provisions of the Agreement.

VII. SPECIAL TERMS AND CONDITIONS

- A. Invoices received from the Firm will be approved by the Finance Director and processed within thirty (30) days from receipt.
- B. The City is not liable for any pre-contractual expenses incurred by any bidder. In addition, no bidder shall include any such expenses as part of the price proposed to conduct the work.
- C. The City reserves the right to withdraw the RFP at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any bidder responding to this RFP. The City expressly reserves the right to postpone action regarding this RFP for its own convenience and to reject any and all proposals in response to this RFP without indicating reasons for such rejection.
- D. The City is not responsible for oral statements made by any of its employees or agents concerning this RFP. If the bidder requires specific information, the bidder must make the request in writing as instructed in the RFP.

- E. All responses to the RFP shall become the property of the City and a matter of public record. Responders must identify all copyrighted material, trade secrets or other proprietary information that the responder claims are exempt from disclosure by the California Public Records Act. In the event a responder claims such exemption, the responder must state in the response that: "The responder will indemnify the City and hold it harmless from any claim or liability and defend any action brought against the City for its refusal to disclose copyrighted material, trade secrets, or other proprietary information to any person making a request thereof." Failure to include such a statement shall constitute waiver of the responder's right to exemption from disclosure and authority for the City to provide a copy of the proposal or any part thereof to the requestor.
- F. The individual(s) preparing and submitting the proposal must state they possess the authority to bind the firm to the terms of the RFP.
- G. All questions regarding this RFP should be made in writing and emailed to: jphillips@cityofstheleena.org.

PART 2 – PROPOSAL REQUIREMENTS AND INFORMATION

I. PROPOSAL PROCESS AND CALENDAR

A. Distribution of Proposals

Request for Proposals shall be available on the City of St. Helena website: www.cityofsthelena.org on January 28, 2016.

B. Proposal Submission

Proposals for the City of St. Helena forensic accounting must be received **no later than 5:00 p.m. February 26, 2016**. Proposals submitted via facsimile or by electronic mail will not be accepted. A total of three (3) original and one (1) electronic copy provided on CD or flash drive must be submitted to the following:

City of St. Helena
Cindy Black
City Clerk
1480 Main Street
St. Helena, CA 94574

Proposals must be sealed and show the following information on the outside of the package in the lower left corner: forensic accounting firm's name, address, and RFP Title. Late or incomplete proposals will not be considered.

C. Proposal Review and Notification

The City Manager and a selection panel will review and evaluate each proposal submitted. It is anticipated that the proposal review process will be completed by March 22, 2016. Written notification will be sent to all firms that submitted a proposal.

D. Interviews

The City will schedule interviews with finalists, if applicable, for the week of March 7, 2016. Firms selected for interviews may be requested to prepare a short presentation for the interview committee.

E. Final Selection and Notification

The City anticipates sending written notification of status to the proposers by March 22, 2015.

II. PROPOSAL REQUIREMENTS

A. Independence

The Firm should provide an affirmative statement that it is independent of the City of St. Helena as defined by generally accepted government auditing standards. Moreover, the Firm must have no conflict of interest with regard to any other work performed for the entity being audited. It is understood that the services performed by the forensic accountant are in the capacity of independent contractor and not as an officer, agent, or employee of the City of St. Helena.

B. License to Practice in California

The Firm should provide an affirmative statement indicating that the Firm and all assigned key professional staff are properly licensed to practice in California and the project manager and lead staff members are Certified Public Accountants, or Certified Fraud Examiners or Forensic Accountants.

C. Firm Qualifications and Experience

1. The proposal should state the size of the Firm, the size of the Firm's governmental forensic accounting staff, the location of the office from which the work on this engagement is to be performed.
2. The Firm shall submit a copy of a report on its most recent forensic audit.
3. The Firm shall provide information on the results of any federal or state desk reviews or field reviews of its forensic accounting during the past three (3) years. In addition, the Firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the Firm during the past three (3) years with state regulatory bodies or professional organizations.
4. For the Firm's office assigned responsibility for the forensic accounting, list the most significant engagements (maximum of 5) performed in the last five (5) years that are similar in organizational type, size and complexity to the engagement described in this request for proposal. These engagements should show experience with local government agencies conducting a forensic audit. Indicate the scope of work, date engagement partners, total hours, and the name and telephone number of the principal client contact and, if available, a link to the final published forensic accounting report.

D. Partner, Supervisory, and Staff Qualifications and Experience

The Firm shall identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in California and is also a certified fraud examiner or forensic accountant. Firm should also provide information on the governmental forensic accounting experience, including the scope of forensic accounting services requested by the City, of each person, and information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this forensic accounting.

The Firm should provide as much information as possible, including resumes, regarding the number, qualifications, experience and training of the specific staff to be assigned to this agreement. The Firm should also indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff, and specialists may be changed if those personnel leave the Firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City of St. Helena. However, in either case, the City of St. Helena reserves the right to approve or reject replacements. This shall also apply to consultants and firm specialists mentioned in response to this request for proposal.

Other forensic accounting personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience and there is continuity of key staff to ensure an efficient forensic accounting process.

E. Specific Forensic Audit Approach

The proposal should set forth a work plan, including an explanation of the forensic accounting methodology to be followed, to perform the services required in Part I, Section III of this request for proposal.

F. Total All-Inclusive Maximum Price

The proposal should contain all pricing information relative to performing the forensic accounting engagement as described in this request for proposal. The total all-inclusive maximum price to be proposed is to contain all direct and indirect costs including all out-of-pocket expenses.

G. Rates by Partner, Supervisor, and Staff Level Times Hours Anticipated for Each

The proposal should include a schedule of professional fees and expenses, as presented in the format shown in Appendix A, which supports the total all inclusive maximum price in the format shown in Appendix B.

H. Ownership of City-Related Documents

All property rights, including publication rights of all reports produced by proposer in connection with services performed under this agreement shall be vested in the City of St. Helena. The proposer selected shall not publish or release any of the results of its examinations without the express written permission of the City of St. Helena Finance Director.

I. Acceptance of Proposal Contents

After the Firm is selected by the City, the contents of the submitted proposal shall become part of the resulting Professional Services Agreement. The successful bidder will be required to execute a standard Professional Services Agreement with the City, an example of which is attached as Appendix B. Firm should identify in the proposal any exceptions to the Professional Services Agreement.

Failure of the Firm to agree to include the proposal as part of the contractual agreement may result in cancellation of the award. The City reserves the right to reject those parts of the proposal that do not meet with the approval of the City.

J. Acceptance or Rejection and Negotiation of Proposals

The City reserves the right to reject any or all proposals, to waive non-material irregularities or information in the request for proposal, and to accept or reject any item or combination of items. By requesting proposals, the City is in no way obligated to award a contract or to pay expenses of the proposing Firms in connection with the preparation or submission of a proposal. All requests for proposals received by the City will remain open, valid and subject to acceptance for a period of three months.

III. EVALUATION PROCESS

The proposals for the City's forensic accounting service will be evaluated by a committee selected by the City Manager. Proposers may be required to make oral presentations as a supplement to their proposals. These presentations would only be held subsequent to the receipt of the proposals and will be part of the evaluation/interview process to determine qualifications of the Firm. The City Manager will schedule a time and location in the City of St. Helena for each oral presentation that it requests. Should a proposer refuse to honor the request for an oral presentation or interview, it may result in the rejection of the proposal by the City.

Evaluation considerations will include the following:

- A. Responsiveness of the proposal in clearly stating the understanding of the work to be performed and in demonstrating the intention and ability to perform the work.
- B. Forensic accountant's experience in conducting forensic audits of cities of similar nature, size, and complexity, and the forensic accountant's commitment to maintaining technical expertise in the municipal financial environment and forensic auditing.
- C. Technical experience and professional qualifications of the forensic accounting team. The number of key and supervisory personnel who will directly participate in the forensic accounting will be a consideration.
- D. Experience in working with government finance software and ability to accept electronic reports and review transactions and documents in electronic format.
- E. Size and structure of the Firm's office from which the forensic accounting work is to be done and continuity in staff. The City is looking for a highly qualified individual or team that is able to meet the due dates specified in this document.
- F. Cost. Although a significant factor, cost will not be the primary factor in the selection of a forensic accounting firm.
- G. Forensic accountant's experience in complying with applicable federal and state regulations relating to non-discrimination and equal employment opportunity.

IV. FORMAT AND CONTENT OF PROPOSAL

A. Title Page

The title page should include the request for proposal subject, the name of the proposer's firm, local address, telephone number, name of contact person, and date.

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Letter of Transmittal

1. State whether the Firm is local, national, or international.
2. Give the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.
3. Describe the range of activities performed by the local office such as forensic accounting, accounting, or management services.
4. Describe the local office's information technology (IT) capabilities, including the number and classifications of personnel skilled in IT forensic accounting who will work on the audit, and describe the local office staff experience and familiarity with local government finance software.
5. Describe the local office's recent forensic accounting experiences with small local government agencies provide the names and telephone numbers of client officials responsible for five forensic audits listed. If available, provide a link to the final published forensic accounting report.
6. Describe the document publication technology and staff formatting and proofreading expertise.

D. Forensic Accounting Team

1. Describe the composition of the forensic accounting team, including staff from other than the local office, and consultants. Describe the commitment of the Firm to providing the same forensic accounting team on subsequent forensic accountings. Include resumes of each person so identified.

2. Identify the supervisors and consultants who will work on the forensic accounting and include resumes of each person so identified.

E. Forensic accounting Scope and Provisions

Describe the scope of the required services to be provided and outline a plan on how such services will be provided. Please include depth of work, staffing, and time estimates. Proposers should list all reports including management letters that are to be issued, the points to be addressed by reports, and the estimated completion dates.

F. Cost Data

Indicate the total hours and hourly rates by staff classification and the resulting all-inclusive maximum fee (not to exceed total) for which the requested work will be done for each of the specific deliverables identified in this Request for Proposal. Fees must include all anticipated costs including travel, per diem, and out-of-pocket expenses.

G. Additional Data

Data not specifically requested should not appear in the foregoing sections, but any additional information considered essential to the proposal may be presented at this section.

APPENDIX A

Schedule of Professional Fees and Expenses to Support the Total All-Including Maximum Price	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partner	_____	\$ _____	\$ _____	\$ _____
Manager	_____	\$ _____	\$ _____	\$ _____
Supervisory Staff	_____	\$ _____	\$ _____	\$ _____
Other (Specify)	_____	\$ _____	\$ _____	\$ _____
Sub-Total				\$ _____
Out-of-Pocket Expenses				\$ _____
Total				\$ _____

APPENDIX B

SAMPLE PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on _____, 2015 by and between the City of St. Helena, located in the County of Napa, 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 and work (together, “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 B, “Compensation”**, attached hereto and made a part hereof. Total compensation shall not exceed \$_____, unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all services 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 services 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 Agreement 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. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Consultant's invoice.

C. Payment to the Consultant for services performed pursuant to this Agreement shall not be deemed to waive any defects in services 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 services under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's services within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject services by a timely written explanation, otherwise Consultant's services shall be deemed to have been accepted. City's acceptance shall be conclusive as to such services except with respect to latent defects and fraud. Acceptance of any of Consultant's services 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 Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. 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. 1/87) covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

- B. 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 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: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. 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"), Consultant shall maintain at least \$2,000,000 of professional liability insurance.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

- E. 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 agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of services or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
 2. For any claims related to Consultant's conduct while performing the services of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
 4. 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.

F. Waiver of Subrogation. 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 agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the services performed by the named insured for the City.

G. The 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.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before services commence. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

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.

When Consultant under this Agreement is a 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.

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.

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 services 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 attorneys 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 services 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 SERVICES

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

D. 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 Agreement, 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 services 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 services as outlined in the Exhibit A, "Scope of Services", shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the services 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
1480 Main Street
St. Helena, California 94574

To Consultant:

SECTION 1

E. 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 services in progress.

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.

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 services 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 services 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 Napa. 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: Jennifer Phillips

Title: _____

Title: City Manager

Approved as to Form:

By: _____

Name: Thomas B. Brown

Title: City Attorney