



December 20, 2017

Name  
Company Name  
Address1  
City, CA Zip

**RE: REQUEST FOR PROPOSALS FOR THE E. COTATI AVENUE  
REHABILITATION PROJECT**

Dear Name,

**I. Introduction**

The City of Cotati (City) invites proposals from consulting firms interested in providing design services for the E. Cotati Avenue Rehabilitation Project (Project). The City was awarded federal grant funds from the second round of the “One Bay Area Grant” program and funds are to be entirely used for the construction phase. Funds are to become available following the start of the Federal Fiscal Year starting October 1, 2018.

The project is to repave East Cotati Avenue from the easterly side of the SMART railroad tracks easterly to the City limits, to landscape the existing median, to update traffic signs, to repair and restore to ADA compliance various cracked and lifted sections of tree root damaged sidewalk, to remove & replace trees causing sidewalk damage and install needed ADA accessibility improvements to driveways and sidewalk access ramps along this segment.

**II. Background**

The City will be receiving OBAG2 funds for the rehabilitation of E. Cotati Avenue between the SMART railroad tracks and the City limits to the east. The grant is for the construction phase only. The City’s Pavement Management Plan describes this road section as being “At Risk” with a Pavement Condition Index of 56. The project location, included as attachment **Exhibit A**, is approximately 680 feet long and 70 feet wide. The pavement restoration is tentatively proposed as including dig outs of the most deteriorated sections and full width grind and overlay of the existing roadway.

Two large pine trees have created damage to the sidewalk and gutter in front of Sunflower Park as their roots have grown and lifted the concrete. The sidewalk is no longer ADA compliant. The project will remove the existing two pine trees and their roots, remove and replace sidewalk as needed and plant three new Chinese Flame trees. For the same reason, the gutter in this area does not flow as designed to the storm drains but creates ponds and “birdbaths.” The project will

remove and replace approximately 200 feet of curb and gutter necessary to restore good drainage.

There are several driveways within the project limits which are not ADA compliant. These driveways will be reconstructed to conform with ADA requirements. There are four existing sidewalk access ramps which are not ADA compliant. These ramps will be reconstructed to conform with ADA requirements.

The street is a multi-modal hub connecting a Priority Development Area (Cotati Depot PDA) to SMART transportation and the Sonoma State University via bike lanes, pedestrian walks and bus routes.

### **III. Scope of Services**

The scope of services is to deliver the design of East Cotati Avenue in accordance with the Caltrans Local Assistance Procedures; specifically, the PS&E, Environmental Document, and Right-of Way Certification of the E. Cotati Avenue Rehabilitation Project.

### **IV. Environmental Document**

At this time, the City expects the level of Environmental Document will be Categorical Exemption under NEPA. However, Caltrans Local Assistance Procedures requires specific steps to be taken, such as *Field Review*. The City is requesting a full service to process all the necessary information for Caltrans.

### **V. Right-of-Way**

The City does not expect the present E. Cotati Avenue footprint to change. There will not be any Right-of-Way take on this project. The City is requesting a full service to process the Caltrans Local Assistance Right-of –Way Certification.

Note that coordinating with utility companies (such as PG&E) is a necessary step for Right-of-Way Certification, and it is considered as part of the overall requested service.

Also, included in this RFP is a request to provide pot-hole services to fully determine the depth and locations of existing facilities.

### **VI. Survey**

A complete topographic survey is expected of the entire project limit. Additionally, we are also requesting that complete survey be done for E. Cotati Avenue from the railroad tracks east to the City limits (680 feet long, project area approximately 70,000 sf).

## **VII. DBE**

The consultant is expected to recommend a DBE Goal in accordance with Chapter 9 of the Caltrans Local Assistance Manual (LAPM).

## **VIII. PS&E**

Full PS&E service compliant with Caltrans Local Assistance Procedures is requested.

### PS&E Certification.

The City expects a complete PS&E Certification package (as required by Caltrans).

Please note the City has made a commitment as to the date for submitting the RFA-Construction. For further details, please see Section XIII of this RFP.

### E. Cotati Avenue Rehabilitation Approach

The City has preliminarily identified spot digouts, grinding and overlay as the preferred rehabilitation approach.

### Engineering Design Services

The Design Consultant will meet with City staff to discuss project details, establish goals, review the project schedule and coordinate efforts. The Design Consultant will assemble all of the available City information pertaining to the project including as-builts drawings, benchmark information, aerial maps and any additional pertinent information for the project.

#### 60% Submittal

After obtaining City aerial mapping, improvement plans, and completing utility coordination, the 60% submittal will be prepared.

The base maps will be developed into design drawings which will clearly illustrate limits of pavement, sidewalks, LID features, utilities, striping, and signage.

The submittal will include outline of specifications, e sets of preliminary plans, and a preliminary estimate of probable costs.

#### 90% Submittal

The Design Consultant will meet with the City to review the 60% design comments. Following this review, the Design Consultant will prepare the 90% submittal. The project design will essentially be complete for this submittal. All comments from the 60% submittal review will be addressed. Included in the submittal will be 3 sets of plans, 2 copies of the specifications and 2 copies of the engineer's estimate.

#### Final Submittal

Following the 90% review meeting with the City, the Design Consultant will prepare final bid documents. An electronic copy of the drawings (in AutoCAD, pdf, and Microsoft Word) and specifications will be provided.

The Design Consultant will prepare a design package to facilitate the construction management personnel. Such package will be equivalent to the *RE Folder* as described in the Caltrans Construction Manual.

### **IX. Geotechnical**

The Design Consultant shall prepare a geotechnical report to identify the existing street section and provide technical information to confirm the rehabilitation approach is appropriate.

### **X. Peer Review**

The City may assemble a Peer Review team to assist in the review of the project. The City expects the consultant to cooperate with the Peer Review team.

Note, the assembling of a Peer Review team will be at the expense of the City.

### **XI. Project Advertisement**

The City is also seeking services to complete project advertisement services. The consultant is expected to advertise the project on the City's behalf, respond to RFIs during the advertisement, issue addendums if necessary, and recommend the lowest responsible bidder.

Additionally, the Design Consultant will fully cooperate with the Construction Management team to provide a complete and timely project delivery.

### **XII. Construction Support**

This consists of responding to RFIs during construction, attending the pre-construction meeting, review submittals, change order review and As-built preparation.

### **XIII. Project Delivery Schedule**

The City is committed to submit the Request for Authorization to Proceed with Construction (RFA-Con) on or before 11/1/2018. This schedule deadline is firm.

All other activities, including Environmental Documents, Right-of Way Certification, etc. will need to support the committed RFA-Con date.

The City requests a proposed schedule that will consider all the major milestones to accomplish the above RFA-Con date. At a minimum, the following milestones will be required:

- Field Review
- Environmental Document (NEPA & CEQA)
- Right-of-Way Certification
- DBE Goal Recommendation
- PS&E Certification
- RFA-Construction

#### **XIV. Submittal of Proposals**

A draft agreement is enclosed (**Exhibit B**). Please review the entire draft agreement carefully before submitting a proposal. If any significant omissions or ambiguities in the draft agreement come to the City's attention while the draft is under review by interested firms, the City will make a uniform written response to all parties.

Proposals shall include the following:

1. Cover Letter: The cover letter is to be signed by an officer of the firm authorized to execute an agreement with the City.
2. Identification of Consultant: provide a brief overview of qualifications of Consultant. Please include a discussion of your engineering background, relevant experience, and five recent relevant projects with references.
3. Personnel: Identify your proposed team, including sub-consultants. Include resumes along with their experience and qualifications.
4. Proposed Work Plan: Your work plan should include both a description of the scope of work and schedule. Additionally, the proposed schedule should include timelines and delivery dates. The work plan should be formatted so that it can be used as an attachment to the consultant contract for the project. As indicated, this is a high profile project and scheduling will be an important driver.
5. Fees. Provide a detailed fee proposal, by task, in a separate sealed envelope for the services identified in the scope of services, include hours associated with each task or subtask, the hourly rate for assigned personnel and any applicable vehicle usage rates, and equipment usage rates, etc.

Interested firms should submit 2 copies of their proposal by 4 pm, Tuesday, January 16th, 2018. Mail or hand deliver to the attention of Jennifer O'Hagan, City of Cotati, 201 West Sierra Avenue, Cotati, California 94931.

## **XV. Selection Procedure**

Consultant selection will be based upon the RFP submitted. Evaluations will be based on the consultant's:

1. Schedule. Demonstrate how you would meet the delivery schedule;
2. Work Plan Soundness. We will evaluate your work plan based on logic of the setup, aggressiveness vs. conservativeness of the schedule, and adequacy of resources assigned to each task;
3. Familiarity with Caltrans and their processes (including past successes in delivering federally funded projects).

The scoring matrix is included as **Exhibit C** of the RFP.

## **XVI. General Terms and Conditions**

1. The City reserves the right to reject any and all RFPs and to award ant or all sections of the work to one or multiple consultants.
2. The City will not be responsible for any costs incurred by respondents in the preparation and submittal of a response to this RFP. City staff will make a recommendation to the City Council, who will approve the agreement based on the City's Design Professional Services Agreement.
3. The City reserves the right to modify the scope of work for this project at any time.
4. Documents, drawings and findings (regardless of format) that are associated with this project shall be the property of the City.
5. Fee proposals included with the submitted RFP shall remain effective for 90 days beyond the submittal date.

## **Contacts**

If you have any questions, please contact Jennifer O'Hagan at 707-665-3637.

Sincerely,



Craig A. Scott, P. E.  
Director of Public Works/City Engineer

c: File

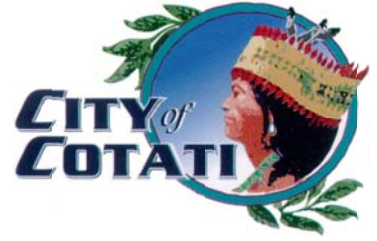


*East Cotati Av Project  
OBAG 2 Funding Application*

**FIGURE 1**

# City of Cotati

Sonoma County, California



## EXHIBIT B

### Draft Professional Services Agreement



**CITY OF COTATI  
STANDARD  
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into and effective as of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the City of Cotati, a municipal corporation (“City”) and \_\_\_\_\_ (“Consultant”) (collectively, the “Parties”).

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional services to City under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Consultant shall provide the services as described in and in accordance with the schedule set forth in Exhibit A, attached hereto and incorporated herein (“Services”).
2. **Compensation.**
  - A. For the full performance of the Services described in Exhibit A hereto City shall compensate Consultant on a time-and-materials basis at the compensation rates specified in Consultant’s Services Rate Schedule included as the last page of Exhibit A; provided, however, that total compensation for the full performance by Consultant of all Services under all Task Orders shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_), said amount being referred to herein as the “not-to-exceed” amount.
  - B. Consultant shall submit detailed monthly invoices reflecting all services performed during the preceding month, and including a revised schedule for performance and additional documentation requested by City, as applicable.
  - C. Consultant shall be compensated for services in addition to those described in Exhibit A, only if Consultant and City execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services. In no case shall the total compensation under this Agreement exceed the “not-to-exceed” amount specified in Paragraph A, above, without prior written authorization of the City Manager.
  - D. City’s obligation to pay compensation to Consultant as provided herein is contingent upon Consultant’s performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto. Notwithstanding any other provision herein, Consultant shall not be paid any compensation until Consultant has complied with the City's Business Registration Ordinance.
3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on \_\_\_\_\_, unless sooner terminated in accordance with Section 4. Upon

termination, any and all of City's documents or materials provided to Consultant and any and all of the documents or materials prepared for City or relating to the performance of the Services, shall be delivered to the City as soon as possible, but not later than fourteen (14) days after termination of the Agreement.

4. **Termination.** City may terminate this Agreement without cause upon ten (10) days' written notice. City may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Consultant or Consultant's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Consultant shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by City, Consultant shall be entitled to payment for all Services performed to the date of termination to the extent such Services were performed to the satisfaction of City in accordance with the terms and conditions of this Agreement. If City terminates this Agreement for cause, Consultant shall be liable to City for any excess cost City incurs for completion of the Services.
5. **Consultant's Representation; Independent Contractor.** Consultant represents that Consultant possesses distinct professional skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Consultant, its agents and employees shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of City. This Agreement shall not be construed as an agreement for employment.
6. **Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services pursuant to this Agreement. City shall furnish to Consultant no facilities or equipment, unless the City otherwise agrees in writing to provide the same.
7. **Licenses, Permits, Etc.** Consultant shall, at Consultant's sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.
8. **Time.** Consultant shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement.
9. **Inspection.** Consultant shall provide the City every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to inspection and approval by the City. The inspection of such work shall not relieve Consultant of any of its obligations pursuant to this Agreement.
10. **Progress Reports.** Upon the City's request, Consultant shall provide, in a form acceptable to City, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Consultant's performance of the Services.

11. **Confidentiality.** In the course of providing services for City, Consultant may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Consultant shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.
12. **Conflict of Interest.** Consultant represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services hereunder. Consultant further covenants that, in the performance of this Agreement, it shall not employ any subconsultant or person having such a conflict of interest. Consultant represents that no one who has or will have any financial interest under the Agreement is an officer or employee of City. If such conflict of interest arises during this Agreement or any extension, Consultant will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement.
13. **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
14. **Standard of Performance.** Consultant shall perform all the Services in a manner consistent with the standards of Consultant's profession. All instruments of service of whatsoever nature, which Consultant delivers to City pursuant to this Agreement, shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of Consultant's profession. All such instruments of service shall become the sole and exclusive property of City upon delivery of the same.
15. **Assignment/Transfer.** Consultant shall make no assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of City.
16. **Subconsultants.** Consultant shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of the City. Any such subconsultants shall be required to comply, to the full extent applicable, with the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name City as an additional insured.
17. **Business Registration.** Consultant shall file a Business License Application as required by the City. The Administrative Services Department shall provide the Consultant with the required form. Consultant shall complete and file the form with the City and shall pay the business license fee before any payment for Services under this Agreement is rendered.
18. **Statement of Economic Interests.** The City may determine that the Consultant must file a Form 700, Statement of Economic Interests, as required by the City's Conflict of Interest Code. If such is the case, the City Clerk's office will provide the Consultant with form and Consultant shall file form with the City Clerk's office. Said filing shall include an Assuming Office Statement within thirty (30) days of execution of this contract, annual statements on or before

April 1 of each year, and a Leaving Office Statement within thirty (30) days after termination of this Agreement or any extensions thereto.

19. **Internal Revenue Service Form W-9.** Consultant must file an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by the City to comply with regulations of the United States Department of the Treasury. If such is the case, the Administrative Services Department shall provide the Consultant with the required form. Consultant shall complete and file the form with the City before any payment for Services under this Agreement is rendered.
20. **Compliance With All Laws.** Consultant and any subconsultants shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Services required hereunder, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that any other government agency or entity provides compensation for any Services, Consultant shall comply with all rules and regulations applicable to such fiscal assistance. Consultant's failure to comply with any law(s) or regulations(s) applicable to the performance of the Services hereunder shall constitute a breach of contract.

Such laws include, but are not limited to, the California Prevailing Wage Law, California Labor Code section 1720 et seq. Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of section 1720(a)(1) of the California Labor Code. Therefore, the services described in Exhibit A shall be performed in accordance with all applicable requirements of the California Prevailing Wage Law including, but not limited to, all applicable requirements contained in Exhibit B, which is attached to and made a part of this Agreement. To the extent that any other government agency or entity provides compensation for any services, consultant shall comply with all rules and regulations applicable to such fiscal assistance."

21. **Discrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.
22. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:
  - A. Personal delivery, in which case notice is effective upon delivery;
  - B. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;



25. **Indemnification.** To the fullest extent allowed by law, Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within thirty (30) days to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of Consultant to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

If any term of portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

This obligation to defend and indemnify City set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination or completion of this Agreement or this section or final payment to the fullest extent and duration allowed by law.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

26. **Insurance.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in

connection with the performance of the work hereunder by the Consultant, Consultant's agents, representatives and employees.

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. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.
3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Consultant shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Errors and Omissions liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

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. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employers Liability: \$1,000,000 per accident for bodily injury or disease
4. Workers' Compensation, Statutory Limits: \$1,000,000 per accident for bodily injury or disease.
5. Errors and Omissions liability: \$1,000,000 per occurrence or claim as approved by the City's Administrative Services Director.

C. No Coverage Limitations or Restrictions. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the aforementioned specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insureds (defined below). Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

- D. Deductibles and Self-Insured Retentions (“SIR”). All deductibles or SIR must be declared to and approved by the City and shall not reduce the limits of liability. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City. City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to so exercise later.
- 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 officers, officials, employees and volunteers (“Additional Insureds”) are to be covered as insureds as respects: liability arising out of work or operations as performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
  2. The Additional Insured coverage under Consultant’s policy shall be “primary and non-contributory” and will not seek contribution from the City’s insurance or self-insurance, and shall be at least as broad as CG 20 01 04 13.
  3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
  4. The Workers’ Compensation endorsement shall contain a Waiver of Subrogation against the City. The Consultant shall provide to the City an endorsement from the Worker’s Compensation insurer, if any, agreeing to waive all rights of subrogation against the City for injuries to employees of the Insured resulting from work for the City or use of the City’s premises or facilities.
  5. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City’s own insurance or self-insurance shall be called upon to protect City as a named insured.
- F. 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.



- G. 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 other than the City's forms provided those endorsements conform to the City's requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- H. Subconsultants. Consultant agrees to include with all subconsultants in their subcontract the same requirements and provisions of this Agreement, including the indemnity and insurance requirements to the extent they apply to the scope of a subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultants shall further agree to include these same provisions with any sub-subconsultant. A copy of these indemnity and insurance provisions will be furnished by Consultant to a subconsultant on request. Consultant shall require all subconsultants to provide a valid certificate of insurance and the required endorsements included in their agreement prior to commencement of any work and Consultant shall provide proof of compliance to City.
27. Amendment. This Agreement may be amended only by a written instrument executed by both Parties.
28. Litigation. If litigation ensues between City and a third-party which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from City, agrees to testify therein at a reasonable and customary fee.
29. Construction. This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.
30. Governing Law; Venue. This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Cotati. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.
31. Non-Waiver. The City's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.
32. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
33. No Third Party Beneficiaries. The Parties do not intend to create, and nothing in this Agreement shall be construed to create, any benefit or right in any third party.

34. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.
35. **Consultant's Books and Records.**
- A. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.
  - B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.
  - C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at Cotati City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
  - D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained by the City. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.
36. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.
37. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
38. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day, month and year first above written.

For City of Cotati:

For Consultant:

\_\_\_\_\_  
Damien O'Bid  
City Manager

\_\_\_\_\_  
Name:  
Title:  
Taxpayer I.D. No.: \_\_\_\_\_

Recommended for Approval:

\_\_\_\_\_  
Norman Veloso  
Director of Administrative Services

Recommended for Approval:

\_\_\_\_\_  
Craig Scott  
Public Works Director/City Engineer

Approved As to Form:

\_\_\_\_\_  
Robin Paige Donoghue  
City Attorney

SAMPLE

## EXHIBIT B

### PROVISIONS REQUIRED FOR PUBLIC WORKS PROJECTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

#### HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.
- B. By signing this Agreement, Consultant agrees that Consultant is aware of the provision of California Labor Code section 3700 which requires every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of the California Labor Code, and that Consultant will comply with such provisions before commencing performance of the Services.
- C. The Consultant and its subconsultants shall forfeit as a penalty to the City \$50 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

#### WAGES:

- A. The services of the Consultant shall be done on or in the execution of a "public works" project as defined by Law. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the City and shall be made available on request. The Consultant and subconsultants engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services. The Consultant shall be responsible for the compliance of its subcontractors.

