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DIRECTOR
Sandra M. Cooper

MEMORANDUM

TO: Interested Human Resources Management Firms

FROM: Sandra M. Cooper, Library Director

DATE: June 10, 2013

SUBJECT: Addendum #1
RFP for Personnel Classification & Compensation Study

Attachment C: Sample Agreement, an attachment to the original RFP, is provided here as an addendum to the original Request for Proposals.

**SONOMA COUNTY LIBRARY
AGREEMENT FOR CONSULTING SERVICES
PERSONNEL CLASSIFICATION & COMPENSATION STUDY**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows: This agreement ("Agreement"), dated as of _____, 20__ ("Effective Date") is by and between the Sonoma County Library, a Joint Powers Agency, and _____ (hereinafter "Consultant").

R E C I T A L S

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

WHEREAS, in the judgment of the Sonoma County Library Commission, it is necessary and desirable to employ the services of Consultant for a Personnel Classification & Compensation Study.

A G R E E M E N T

1. Scope of Services.

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

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

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a Person practicing in Consultant's profession. Library has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Library shall not operate as a waiver or release. If Library determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Library, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Library to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is

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satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

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

2. Payment. Consultant shall be paid a lump sum of _____ for completion of all work, in accordance with the amounts specified below for completion of each subtask, regardless of the number of hours or length of time necessary for Consultant to complete the services. Consultant shall not be entitled to any additional payment for any expenses incurred in completion of any subtask. Specified amounts shall only be paid for completion of each subtask.

For completion of _____ [subtask] _____: \$ _____

For completion of _____ [subtask] _____: \$ _____

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

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

4. Termination.

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

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

4.3 Delivery of Work Product and Final Payment upon Termination. In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to Library all materials and work product subject to Section 9.11 (Ownership and Disclosure of Work Product) and shall submit to Library an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

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

4.5 Authority to Terminate. The Sonoma County Library Commission has the authority to terminate this Agreement on behalf of the Library. In addition, the Library Director, in consultation with Library's legal counsel, shall have the authority to terminate this Agreement on behalf of the Library.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Library, and to indemnify, hold harmless, and release Library, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Library based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on Library's part, but to the extent required by law, excluding liability due to Library's conduct. Library shall have the right to

select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described below:

6.1 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following specific language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days' prior written notice to the Sonoma County Library.

6.2 General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than One Million Dollars (\$1,000,000) limit for each occurrence and Two Million Dollars (\$2,000,000) each for the general aggregate and the products/completed operations aggregate. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

a. The Sonoma County Library , its officers and employees, is named as additional insured for all liability arising out of the on-going and completed operations by or on behalf of the named insured in the performance of the work under this Agreement between the Sonoma County Library and Consultant.

b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

c. The insurance provided herein is primary and non-contributory coverage to the Sonoma County Library with respect to any insurance or self-insurance programs maintained by the Library.

d. This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Library.

6.3 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

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This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the Sonoma County Library.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Library Director in a form approved by legal counsel. The Library Commission must authorize all other extra or changed work. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the Library.

9. Representations of Consultant.

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

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Library and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Library provides its employees. In the event Library exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the

General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the Library

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

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

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

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

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

9.9 Assignment of Rights. Consultant assigns to Library all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Library in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are

not limited to, placing proper notice of copyright on all versions of the plans and specifications as Library may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Library. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Library.

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

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

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits Library’s right to terminate this Agreement pursuant to Article 4.

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

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

ATTACHMENT C

TO: LIBRARY:

Director's Office
Sonoma County Library
211 E Street
Santa Rosa, CA 95404

TO: CONSULTANT:

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

13. Miscellaneous Provisions.

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

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

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

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

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

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

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

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

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

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

ATTACHMENT C

CONSULTANT: _____

By: _____

Name: _____

Title: _____

Date: _____

SONOMA COUNTY LIBRARY

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR LIBRARY:

By: _____
Administrative Services Division

Date: _____

APPROVED AS TO FORM FOR
COUNTY:

By: _____
County Counsel

Date: _____

By: _____
Library Director

Date: _____