



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: Public Works

Prepared by: Theo Sanchez, Associate Civil  
Engineer  
April Miller, Public Works Director

City Manager Approval: 

**TOPIC: PICKLEWEED PARK ENHANCEMENT PROJECT**

**SUBJECT: AUTHORIZE AND AWARD AGREEMENTS FOR THE PICKLEWEED PARK ENHANCEMENT PROJECT, INCLUDING:**

1. CONSTRUCTION AGREEMENT TO BAUMAN LANDSCAPE AND CONSTRUCTION, INC. AND AUTHORIZE \$7,120,000 FOR PROJECT CONSTRUCTION
2. PROFESSIONAL SERVICES AGREEMENT WITH COASTLAND CIVIL ENGINEERING, INC. FOR CONSTRUCTION MANAGEMENT, INSPECTION, AND TESTING SERVICES IN THE AMOUNT NOT TO EXCEED \$644,575
3. SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH GATES + ASSOCIATES FOR CONSTRUCTION ADMINISTRATION SERVICES, IN AN ADDITIONAL AMOUNT OF \$19,450, INCREASING THE TOTAL NOT-TO-EXCEED AMOUNT OF THE AGREEMENT TO \$565,784, AND
4. APPROVE THE PLANS AND SPECIFICATIONS FOR THE PICKLEWEED PARK ENHANCEMENT PROJECT, DEEMED REASONABLE BY THE CITY ENGINEER, FOR CITY PROJECT NO. 11376, ON FILE IN THE DEPARTMENT OF PUBLIC WORKS.

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FOR CITY CLERK ONLY

Council Meeting:

Disposition:

**RECOMMENDATION:**

Staff recommendations the following:

1. Award the construction agreement to Bauman Landscape and Construction, Inc. in the amount of \$6,031,641.50; and authorize the City Manager to execute the construction agreement not to exceed the amount of \$7,120,000, including contingency funds of \$1,088,358.50.
2. Authorize the City Manager to enter into a Professional Services Agreement with Coastland Civil Engineering, Inc. for construction management, inspection, and testing services in the amount not to exceed \$644,575.
3. Authorize the City Manager to enter into a second amendment to the Professional Services Agreement with Gates + Associates for construction administration services in an additional amount of \$19,450, increasing the total not-to-exceed amount of the agreement to \$565,784.
4. Approve the plans and specifications for the Pickleweed Park Enhancement Project, deemed reasonable by the City Engineer, for City project no. 11376, on file in the Department of Public Works.

**BACKGROUND:**

The Pickleweed Park Enhancement Project (Project) has been a community priority for more than a decade, and the City has been developing funding strategies for this project since 2010. Throughout that time, the City has conducted numerous rounds of community outreach that has helped planners refine the proposed enhancements based on community need and interests. The Project proposes to add several park amenities, including an all-weather turf field, basketball/sport court, playground structure for children under five, fitness equipment for adults, shaded seating, and a gazebo.

On [February 22, 2022](#), City Council approved the Land and Water Conservation Fund (LWCF) grant application for this project, which detailed a total funding request of \$4,240,000 from LWCF with a required City match of \$4,240,000. On March 27<sup>th</sup>, 2024, the City and State of California signed an agreement approving the City's use of \$4,240,000 LWCF grant funds for this project.

On [November 7<sup>th</sup>, 2022](#), City Council awarded the professional services agreement with Gates + Associates for landscape architectural and engineering design services in the amount not to exceed \$498,734. On [February 20, 2024](#), City Council awarded a first amendment to the professional services agreement to Gates + Associates for additional landscape architectural and engineering design services in the amount not to exceed \$47,600, increasing the total not to exceed contract amount to \$546,334.

**ANALYSIS:**

1. Construction Agreement

On May 21, 2024, the Project was advertised in accordance with San Rafael's Municipal Code Chapter 11.50. Due to the budget limitation, the Project was advertised with some elements listed as Additional Alternates to allow the city to choose whether to award them depending on the bids received. The plans and specifications, deemed reasonable by the City Engineer, are available at

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the Department of Public Works and on the City’s website:  
<https://www.cityofsanrafael.org/pickleweed/>

<b><u>ADVERTISED BID LIST</u></b>	<b><u>PROJECT ELEMENTS</u></b>
Base Bid	All-weather turf, basketball court, gazebo, prefab restroom, fitness equipment, pedestrian pathways, etc.
Additional Alternate #1	Playground Area for children under 5 yrs.
Additional Alternate #2	Security Cameras
Additional Alternate #3	Phase 2: grading, pathways, planting between the Project limits and future Tiscornia Marsh Restoration

At the bid opening on June 28, 2024, the following bids were received and read aloud. The low bidder was selected based on the Base Bid total.

<b><u>NAME OF BIDDER</u></b>	<b><u>BASE BID</u></b>	<b><u>ADD ALT #1</u></b>	<b><u>ADD ALT #2</u></b>	<b><u>ADD ALT #3</u></b>
Bauman Landscape and Construction	5,649,691.50	381,950.00	93,483.50	822,938.50
Ghilotti Bros	6,499,848.00	289,470.00	197,700.00	506,600.00
Robert A Bothman Construction	6,899,500.00	450,000.00	195,000.00	773,000.00
Azul Works	7,137,828.80	170,537.70	89,600.00	253,450.92

The construction bids were reviewed by Public Works staff and the low base bid of \$5,649,691.50 from Bauman Landscape and Construction was found to be both responsive and responsible.

The base bid includes the main project elements and construction details for connecting the northern and eastern perimeter of the project to the existing levees, which are contiguous to the project.

**Alternative #1 – Playground Area for Children Under 5 Years**

Staff recommends awarding Alternate #1, which consists of a playground area for children under the age of 5. This amenity is included in the LWCF grant scope of work and is eligible for reimbursement. Additionally, this amenity was strongly supported by the community during outreach and engagement events, and further enhances quality of life at the park.

**Alternative #2 – Security Cameras**

Throughout the community engagement and outreach process, community members voiced concerns about safety and security at the park. Security cameras were included in the design to help address those concerns. However, installation of security cameras is not eligible for LWCF grant reimbursement, therefore staff recommends not awarding Alternative #2 at this time. Additionally, staff recommend conducting additional community outreach to assess community interest in having additional security cameras. In previous outreach conducted in 2022 and 2023, the community expressed interest in having the City install more security cameras in the

neighborhood, however it is important to re-engage with them to determine whether security cameras remain a community priority.

Alternative #3: Phase 2 Work

Alternate #3 is a design alternative that assumes the Tiscornia Marsh Restoration (TMR) project, led separately by the Marin Audubon Society (MAS), has completed reconstruction of the levees to a higher elevation and provides alternative construction details for connecting the Pickleweed project elements to the raised levees. Alternative #3 was provided because the construction of the Pickleweed and TMR projects were anticipated to begin the same year with an earlier start for the TMR project. However, the TMR project schedule has recently changed with a new anticipated construction start date of late-2025. As such, the Pickleweed project is anticipated to be completed prior to the start of the TMR project and staff does not recommend proceeding with Alternative #3 as part of this contract award.

City and MAS will continue coordinating to ensure that the TMR project, subject to City's review and approval, includes the necessary improvements that were described in Alternate #3 (i.e., grading, driveway access, pedestrian pathway, minor planting and associated irrigation) to match the conditions of the newly constructed Pickleweed field and facilities. These improvements are planned to be incorporated into the Pickleweed project through future change order(s), and include minor concrete walkway expansion, grading for drainage conveyance, and installation of one pedestrian-level light bollard near the proposed basketball court. The cost of these potential change order items is estimated to be approximately \$150,000 and is accounted for in the proposed construction contingency.

City staff recommends awarding the Base Bid plus Alternate #1 in the construction agreement with Bauman Landscape and Construction in the amount of \$6,031,641.50 and recommends the City Council authorize a construction contingency of \$1,088,358.50, approximately 18 percent, for a total amount of \$7,120,000.

2. Professional Services Agreement for Construction Management, Inspection, and Material Testing

On June 7, 2024, the City advertised a Request for Proposals (RFP) for construction management, inspection, and material testing services on the Project. On June 21, 2024, three proposals were received and evaluated based on the criteria specified in the RFP including, but not limited to, completeness of the proposal, relevant experience and success in similar projects, experience and quality of project team, understanding of the project scope of work, ability to meet deadlines and operate within budget, and references by former clients on similar projects.

After reviewing the proposals and interviewing the consultants, City staff found Coastland Civil Engineering, Inc. to be the most qualified for this project and requested that they provide a fee proposal. Coastland Civil Engineering's fee proposal for this project totals \$644,575, which staff found to be reasonable and within industry standards.

3. Professional Services Agreement (Second Amendment) for Construction Support Services

As the Pickleweed Park Enhancement Project progresses towards construction, staff recommends the City Council approve the proposed second amendment with Gates + Associates for construction administration services. The original design agreement with Gates + Associates already included construction administrative services for Gates + Associates specifically. This second amendment, totaling \$19,450, expands the construction administrative services to include

their subconsultants Miller Pacific and BKF who will be providing as needed geotechnical and civil design services, respectively. These efforts will be performed on an as-needed basis at the request of the City and are separate from the professional services agreement for construction management, inspection, and testing services. This second amendment would increase the Gates + Associates not to exceed contract total to \$565,784.

**FISCAL IMPACT:**

The three proposed agreements total \$7,784,025 in project commitments including \$7,120,000 for construction/contingency, \$644,575 for construction management, inspection, and testing services, and \$19,450 for additional construction administration services. The following table summarizes these expenses. Appropriations supporting this project were included in the FY 2024-25 Budget (Capital Improvement Fund - #410) approved by City Council on [June 17, 2024](#). Underlying funding sources for the project include \$4.25 million in grant funding combined with City matching funds allocated for this purpose.

**Expenses: Agreements for Construction**

Agreement Type	Contractor / Consultant	Totals		
		Base Bid + Add Alt 1	Contingency	Contract Total
Construction + 18% Contingency	Bauman Landscape and Construction	\$6,031,641.50	\$1,088,358.50	\$7,120,000
Construction Management, Inspection, and Testing	Coastland Civil Engineering			\$644,575
Construction Administration Support	Gates + Associates			\$19,450
	<b>Total</b>			<b>\$7,784,025</b>

**OPTIONS:**

1. Award all agreements as presented and approve the plans and specifications for the Project.
2. Do not award the agreements and provide further direction to staff.

**RECOMMENDED ACTION:**

1. Award the construction agreement to Bauman Landscape and Construction, Inc. in the amount of \$6,031,641.50; and authorize the City Manager to execute the construction agreement not to exceed the amount of \$7,120,000, including contingency funds of \$1,088,358.50.
2. Authorize the City Manager to enter into a Professional Services Agreement with Coastland Civil Engineering, Inc. for construction management, inspection, and testing services in the amount not to exceed \$644,575.

3. Authorize the City Manager to enter into a second amendment to the Professional Services Agreement with Gates + Associates for construction administration services in an additional amount of \$19,450, increasing the total not-to-exceed amount of the agreement to \$565,784.
4. Approve the plans and specifications for the Pickleweed Park Enhancement Project, deemed reasonable by the City Engineer, for City project no. 11376, on file in the Department of Public Works.

**ATTACHMENTS:**

1. Professional Services Agreement with Coastland Civil Engineering, Inc.
2. Second Amendment to Professional Services Agreement with Gates + Associates

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
THE CITY OF SAN RAFAEL  
AND  
COASTLAND CIVIL ENGINEERING, LLP  
FOR PICKLEWEED PARK ENHANCEMENTS SERVICES**

This Agreement is made and entered into as of \_\_\_\_\_ (the “Effective Date”), by and between the CITY OF SAN RAFAEL, a chartered California municipal corporation (hereinafter "**CITY**"), and COASTLAND CIVIL ENGINEERING, LLP, a California limited liability partnership (hereinafter "**CONSULTANT**"). **CITY** and **CONSULTANT** may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

**RECITALS**

A. **CITY** desires to secure professional services more fully described in this Agreement, at **Exhibit A**, entitled “SCOPE OF SERVICES”; and

B. **CONSULTANT** represents that it, and its subcontractors, if any, have the professional qualifications, expertise, and necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of **CITY**; and

C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

**NOW, THEREFORE**, the parties hereby agree as follows:

**AGREEMENT**

1. **SERVICES TO BE PROVIDED.**

Except as otherwise may be expressly specified in this Agreement, **CONSULTANT** shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by **CITY** at its sole risk and expense. Services to be provided to **CITY** are more fully described in **Exhibit A** entitled “SCOPE OF SERVICES.” **CONSULTANT** acknowledges that the execution of this Agreement by **CITY** is predicated upon representations made by **CONSULTANT** in that certain proposal, dated June 28, 2024 (“Proposal”) set forth in **Exhibit A**, which constitutes the basis for this Agreement.

2. **COMPENSATION.**

In consideration for **CONSULTANT**’s complete performance of Services, **CITY** shall pay **CONSULTANT** for all materials provided and services rendered by **CONSULTANT** at the unit rates and rates per hour for labor, as set forth in **Exhibit A**, for a total amount not to exceed

\$644,575.

**CONSULTANT** will bill City on a monthly basis for Services provided by **CONSULTANT** during the preceding month, subject to verification by **CITY**. **CITY** will pay **CONSULTANT** within thirty (30) days of City's receipt of invoice.

3. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate two (2) years from the effective date.

4. PROJECT COORDINATION.

A. **CITY'S Project Manager.** Theo Sanchez is hereby designated the PROJECT MANAGER for the **CITY** and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. **CONSULTANT'S Project Director.** **CONSULTANT** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. Mike Janet is hereby designated as the PROJECT DIRECTOR for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONSULTANT** shall notify the **CITY** within ten (10) business days of the substitution.

5. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all **CITY** documents or materials provided to **CONSULTANT** and any and all of **CONSULTANT's** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.



6. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONSULTANT** in connection with the performance of its duties under this Agreement, shall be the sole property of **CITY**. **CITY** may use said property for any purpose, including projects not contemplated by this Agreement.

7. INSPECTION AND AUDIT.

Upon reasonable notice, **CONSULTANT** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONSULTANT** in connection with its performance of its duties under this Agreement. **CONSULTANT** shall fully cooperate with **CITY** or its agent in any such audit or inspection.

8. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

9. INSURANCE REQUIREMENTS.

During the term of this Agreement, and for any time period set forth in **Exhibit B**, **CONSULTANT** shall procure and maintain in full force and effect, at no cost to **CITY** insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in **Exhibit B**.

10. INDEMNIFICATION.

A. Except as otherwise provided in subparagraph B of this section, **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **CITY**, and hold harmless **CITY**, its officers, agents, employees and volunteers (collectively, the “**City Indemnitees**”), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively “**CLAIMS**”), arising out of **CONSULTANT’S** performance of its obligations or conduct of its operations under this Agreement. The **CONSULTANT'S** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **City Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **City Indemnitees**, the **CONSULTANT'S** indemnification obligation shall be reduced in proportion to the **City Indemnitees’** share of liability for the active negligence or willful misconduct. In addition, the acceptance or approval of the **CONSULTANT’S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONSULTANT’S** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONSULTANT’S** performance of or operations under this Agreement,

**CONSULTANT** shall provide a defense to the **City Indemnitees** or at **CITY'S** option reimburse the **City Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

B. Where the services to be provided by **CONSULTANT** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONSULTANT** shall indemnify and hold harmless the **CITY** and its officers, officials, and employees (collectively **City Indemnitees**) from and against damages, liabilities or costs (including incidental damages, Court costs, reasonable attorney's fees as may be determined by the Court, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) to the extent they are caused by the negligence, recklessness, or willful misconduct of **CONSULTANT**, or any subconsultants, or subcontractor or anyone directly or indirectly employed by them, or anyone for whom they are legally liable (collectively Liabilities). Such obligation to hold harmless and indemnify any indemnity shall not apply to the extent that such Liabilities are caused in part by the negligence or willful misconduct of such City Indemnitee.

C. 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, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

11. **NONDISCRIMINATION.**

**CONSULTANT** shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

12. **COMPLIANCE WITH ALL LAWS.**

**CONSULTANT** shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. **CONSULTANT** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONSULTANT** shall release, defend, indemnify and hold harmless **CITY**, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

13. **NO THIRD PARTY BENEFICIARIES.**

**CITY** and **CONSULTANT** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

14. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

To **CITY**'s Project Manager:

Theo Sanchez, Associate Civil Engineer  
1400 Fifth Avenue  
San Rafael, CA 94901

To **CONSULTANT**'s Project Director:

Mike Janet  
1400 Neotomas Avenue  
Santa Rosa, CA 95405

15. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **CITY**. **CONSULTANT** and **CITY** expressly intend and agree that the status of **CONSULTANT**, its officers, agents and employees be that of an Independent Contractor and not that of an employee of **CITY**.

16. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONSULTANT** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONSULTANT** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

17. SET-OFF AGAINST DEBTS.

**CONSULTANT** agrees that **CITY** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** owes **CITY** under any ordinance,

agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

18. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

19. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

20. CITY BUSINESS LICENSE / OTHER TAXES.

**CONSULTANT** shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code, and **CONSULTANT** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONSULTANT** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

21. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

22. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

23. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

*[Signatures are on the following page.]*

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

**CITY OF SAN RAFAEL:**

**CONSULTANT:**

\_\_\_\_\_  
CRISTINE ALILOVICH, City Manager

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

APPROVED AS TO FORM:  
**Office of the City Attorney**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
By: ROBERT F. EPSTEIN,  
City Attorney

[If CONSULTANT is a corporation, add  
signature of second corporate officer]

ATTEST:  
**City Clerk**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
LINDSAY LARA, City Clerk

**EXHIBIT A**  
**SCOPE OF SERVICES**

The Services to be performed for **CITY** by **CONSULTANT** under this Agreement are more fully described in **CONSULTANT's** proposal, which is attached to this Exhibit A.

## **EXHIBIT B INSURANCE REQUIREMENTS**

During the term of this Agreement, and for any time period set forth below, **CONSULTANT** shall procure and maintain in full force and effect, at no cost to **CITY** insurance policies with respect to employees and vehicles assigned to the performance of Services under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in this Exhibit B.

A. **Scope of Coverage.** During the term of this Agreement, **CONSULTANT** shall maintain, at no expense to **CITY**, the following insurance policies:

1. **Commercial general liability.** A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. **Automobile liability.** An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence.

3. **Professional liability.** If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **CITY** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.

4. **Workers' compensation.** If it employs any person, **CONSULTANT** shall maintain workers' compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONSULTANT's** workers' compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

B. **Other Insurance Requirements.** The insurance coverage required of the **CONSULTANT** in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or workers' compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONSULTANT's** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONSULTANT'S** policies shall be at least as broad as



ISO form CG20 01 04 13.

3. Except for professional liability insurance or workers' compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONSULTANT** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONSULTANT** agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not **CITY** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the Effective Date of this Agreement.

7. 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 noncontributory basis for the benefit of **CITY** (if agreed to in a written contract or agreement) before **CITY'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **CITY** or any other additional insured party. 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. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the **CONSULTANT** under this Agreement.

9. **CONSULTANT** agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by **CONSULTANT**, provide the same minimum insurance coverage required of **CONSULTANT**, except as with respect to limits. **CONSULTANT** agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. **CONSULTANT** agrees that upon request by **CITY**, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the performance of Services will be submitted to **CITY** for review.

10. **CONSULTANT** agrees to be responsible for ensuring that no contract used by any party involved in any way with the Services reserves the right to charge **CITY** or **CONSULTANT** for the cost of additional insurance coverage required by this Agreement. Any

such provisions are to be deleted with reference to **CITY**. It is not the intent of **CITY** to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against **CITY** for payment of premiums or other amounts with respect thereto.

**C. Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the **CITY** and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **CITY** or other additional insured party. At **CITY's** option, the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

**D. Proof of Insurance.** **CONSULTANT** shall provide to the **PROJECT MANAGER** all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **CITY** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONSULTANT**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by the **CITY**.

**SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH  
DAVID L. GATES & ASSOCIATES, INC. FOR LANDSCAPE ARCHITECTURAL  
AND ENGINEERING DESIGN SERVICES**

**THIS SECOND AMENDMENT** to the Professional Services Agreement by and between the **CITY OF SAN RAFAEL** (hereinafter “**CITY**”), and **DAVID L. GATES & ASSOCIATES, INC.** (hereinafter “**CONSULTANT**”), is made and entered into as of

\_\_\_\_\_.

**RECITALS**

**WHEREAS**, the **CITY** and **CONSULTANT** entered into a Professional Services Agreement dated December 1, 2022 to perform professional services in connection with **CITY’S** Landscape Architectural and Engineering Design Services, for an amount not to exceed \$498,734 (the “**Agreement**”); and

**WHEREAS**, the **CITY** entered into a First Amendment to the Professional Services Agreement dated April 23, 2024, to perform additional professional services in connection with **CITY’S** Landscape Architectural and Engineering Design Services, for an amount not to exceed \$47,600 and increasing the total not to exceed amount under the **Agreement** to \$546,334; and

**WHEREAS**, **CITY** requires additional professional services from the **CONSULTANT**, and the **CONSULTANT** is willing to provide such services.

**AMENDMENT TO AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree to amend the **Agreement** as follows:

1. Article II of the **Agreement**, entitled “**DUTIES OF CONSULTANT**” is hereby amended to include the additional services set forth in **CONSULTANT’S** proposal dated June 16, 2024, attached to this Second Amendment as Exhibit A and incorporated herein by reference.
2. Article IV of the **Agreement**, entitled “**COMPENSATION**” is hereby amended to include additional compensation payable to **CONSULTANT** for the services described in Exhibit A to this Second Amendment, on a fixed fee basis in accordance with the Exhibit A, in a not-to-exceed amount of \$19,450 and to change the total not-to-exceed amount under the **Agreement** to \$565,784.

3. Except as specifically amended herein, all of the other provisions, terms and obligations of the Agreement between the parties shall remain valid and shall be in full force.

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment on the day, month, and year first above written.

**CITY OF SAN RAFAEL**

**CONSULTANT**

\_\_\_\_\_  
CRISTINE ALILOVICH, City Manager

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

[If Contractor is a corporation, add signature of second corporate officer]

\_\_\_\_\_  
LINDSAY LARA, City Clerk

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT F. EPSTEIN, City Attorney