



MAYOR GARY O. PHILLIPS
COUNCILMEMBER VICE KATE COLIN
COUNCILMEMBER MARIBETH BUSHEY
COUNCILMEMBER JOHN GAMBLIN
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

PUBLIC WORKS DEPARTMENT: (415)485-3355 FAX: (415)485-3334
Bill Guerin, Director of Public Works

REQUEST FOR PROPOSALS (RFP)
For
Third and Hetherton Traffic Study

October 10, 2016

Introduction

The City of San Rafael's Public Works Department (City) hereby requests proposals from qualified consultants to prepare a traffic analysis report that identifies five options to increase the pedestrian safety and traffic throughput at Third Street and Hetherton Streets (study area). It is the intent of the City to hire a qualified consultant who can provide a final product composed of a detailed traffic analysis report with drawings that accurately convey possible solutions to increase safety and throughput.

Proposals shall be submitted by firms that have a capable and demonstrable background in the type of work described in the section entitled "Project Description" of this notice. In addition, all interested firms shall have sufficient, readily available resources, in the form of trained personnel, support services, specialized consultants and financial resources, to carry out the work without delay or shortcomings.

Interested consultants are invited to submit qualifications in accordance with the requirements of this Request for Proposals (RFP). **The proposals shall be submitted via email to Jeff Stutsman (Jeffrey.Stutsman@cityofsanrafael.org) no later than 2:00 PM on Friday, October 28, 2016.**

Background

This intersection currently experiences excessive delay on all approaches. The high amount of vehicle trips from US 101 to the north and south, the Bettini Transit Center, Whistle Stop Wheels, Montecito Shopping Center, San Rafael High School, the San Rafael Canal, Point San Pedro Road and the San Rafael Rock Quarry. In addition to vehicle traffic, the intersection experiences high pedestrian traffic coming and going from the Bettini Transit Center and the future SMART Station. It is anticipated that when rail service commences in 2017 the pedestrian volume at this intersection will increase.

Vehicles traveling westbound on Third Street headed towards Highway 101 South utilize the dual left turn lane turning onto Hetherton Street. Hetherton is a wide street with three travel lanes and a bus lane. In the last five years there have been seven pedestrian related accidents with two of them being fatalities.

There are a high number of vehicles making the right turn from Southbound Hetherton Street onto Third Street. The queue on Hetherton backs up beyond the available turn pocket for most of the day. Many motorists avoid the queue and utilize the second lane which is a thru lane to turn onto Third Street. In the last five years three pedestrian accidents and one bicycle accident have occurred in the crosswalk.

Improving pedestrian safety and circulation to the intersection was included in the San Rafael General Plan 2020 (adopted in November, 2004).

Project Description

The work described in the RFP includes the traffic analysis of the intersection at Third Street and Hetheron Street. The final product will be a traffic analysis report detailing a minimum of five different options that address pedestrian safety and traffic throughput. The report shall analyze the traffic impacts at all the intersections that are influenced by Third Street and Hetheron Street as noted in attachment A. The Consultant shall make recommendations for the short term and long term preferred alternatives based on cost, overall traffic impact, and pedestrian safety. It is intended that the deliverables of the study will provide direct input to the design and implementation of the preferred alternative.

Possible improvements that may be considered are:

1. Leading pedestrian Interval
2. Dedicated pedestrian phase
3. Removal of the south leg crosswalk
4. Pedestrian Scramble Phase / dual right turn onto Third Street
5. Other lane configurations
6. “Don’t Block the Box” intersection signage
7. Any other feasible alternatives developed by the consultant

All work by the consultant shall be completed within four months from the date of contract execution.

Consultant Responsibility

The consultant chosen for this project shall be responsible for the following tasks:

Task 1: Project Management and Coordination

1. The consultant shall meet periodically with the City to discuss the project, present design options, review alternatives, etc. For cost estimation, a total of four meetings shall be assumed.
2. The consultant shall meet with the Pedestrian Advisory Committee (BPAC) to discuss the project, present design options, etc. For cost estimation, one meeting shall be assumed.
3. The consultant shall provide a schedule, and if necessary updates, for the project. (Microsoft Project or similar format).

Deliverables:

- Project schedule and updates
- Meeting agendas and minutes for all design and coordination meetings

Task 2: Preliminary Studies and Research

1. The consultant shall perform the following:
 - a. Develop preliminary alternatives for improving the pedestrian safety and traffic throughput.

- b. Prepare a Traffic Analysis Report which details the alternatives, including but not limited to a drawing for each alternative, Pro's and Con's for each alternative, the necessary traffic analysis, estimated cost to implement each alternative and a matrix of the five alternatives which clearly ranks all alternatives and recommends a preferred alternative.

Deliverables:

- Preliminary traffic analysis report
- Final Report

City Responsibility

For this project, the City shall:

1. Provide historic turning movement counts and average daily traffic
2. Provide historic SWITRS data
3. Provide historic pedestrian counts
4. Provide the City's Synchro Model
5. any existing information in the possession of the City necessary to complete the design

Anticipated Schedule

- | | |
|-------------------------------|---------------------------|
| ○ Advertise RFP | October 10, 2016 |
| ○ Proposal Submittal Deadline | 2:00 PM; October 28, 2016 |
| ○ Select Consultant | November 7 - 11, 2016 |

Proposal Requirements

The proposal shall consist of one (1) electronic PDF copy of the Proposal. At a minimum, the proposal shall include:

1. Cover letter signed by the person authorized to negotiate a contract for proposed services with the City on behalf of the proposal team. Cover letter must indicate that the City's standard agreement form is acceptable to the consultant.
2. Project understanding outlining the consultant's basic understanding of the project and identifying key issues to be addressed during the project and any insights.
3. A detailed project approach and level of effort, in accordance with the section entitled "Scope of Work" of this notice.
4. A project schedule including at minimum, those tasks outlined in the section entitled "Scope of Work" of this notice. The project schedule shall be in Gant format and assume that the agreement will be awarded in December 2016 and Notice to proceed will be issued shortly thereafter.
5. A Statement of Qualification (SOQ) that includes:

- a. The proposer's experience and history in performing this type of work, particularly those projects that have been successfully completed.
- b. References of persons, firms, or agencies that the City may contact to verify the experience of the proposer.
- c. An organization chart setting forth the project manager and design team.
- d. Experience for each individual expected to perform responsible portions of the work.
- e. Experience for each sub-consultant.

Method of Payment

The method of payment to the successful proposer shall be on a time and materials basis with a maximum "not to exceed" fee, as set by the proposer in his/her proposal, as being the maximum cost to perform all work. This figure shall include direct costs and overhead such as, but not limited to, transportation, communications, subsistence and materials, and any subcontracted items of work to prepare a detailed traffic analysis report. Progress payments will be based on actual hours, hourly costs and support service costs charged to the project on a monthly basis.

The maximum "not to exceed" cost shall be submitted with the proposal in a separate PDF file.

Submittal Requirements

- Proposals must be received no later than **2:00 p.m., local time, on October 28, 2016**, via email to Jeffrey Stutsman (Jeffrey.Stutsman@cityofsanrafael.org)
- Proposals and/or modifications to Proposals received after the hour and date specified above will be rejected and returned unopened to the proposer.
- All Proposals shall be submitted according to the specifications set forth in this RFP. Failure to adhere to these specifications may be cause for rejection.
- Once submitted, Proposals, including the composition of the consulting staff, shall not be changed without prior written consent.
- All requests for clarification for this RFP must be made in writing via email. The City will only respond to written questions from consultants. The City cannot respond to verbal questions submitted by telephone or in person. All addenda will be posted on the City's Website. By submitting a Proposal, the proposer affirms that they are aware of any addenda and have prepared their Proposal accordingly. No allowances will be made for a proposer's failure to inform themselves of addenda content. A link to the addenda may be accessed at <http://www.cityofsanrafael.org/pubworks-proj-current/>

Pre-Submittal Activities

- All questions relating to the RFP shall be presented in writing (email) at least 96 hours prior at **Jeffrey.Stutsman@cityofsanrafael.org**

- The City reserves the right to revise the RFP prior to the indicated due date. The City may consider extending the due date for RFP due to significant revisions to Scope of Services.

Consultant Nominating and Selection Process

- A Consultant Selection Committee will be established for this project. Each member of the committee will evaluate each submitted Proposal.
- Based on qualifications provided in Proposals, the committee will rank the consultants. The top-ranked firm will be the selected firm.
- The Committee, or representative, will enter into negotiations with the selected firm. The negotiations will cover: Scope of Work, contract terms and conditions, and profit. If the Committee is unable to reach an acceptable agreement with the selected firm, the negotiations will be terminated and negotiations with another firm will be initiated.
- After negotiating a proposed agreement that is fair and reasonable, the Public Works Director will recommend to the City Council the approval of the agreement. Final authority to approve the agreement rests with the City Council.

Evaluation Criteria

Ranking of the proposals will be based on the following point system (100 points maximum):

- Inclusion of all required items and completeness of the proposal (5 points)
- Understanding of the work to be done (25 points)
- Previous experience of similar projects completed on time and within budget (30 points)
- Qualified and experienced personnel in the project team (15 points)
- Commitment to adhering to the project schedule and budget (15 points)
- Clear description of the tasks and demonstrated technical ability (10 points)

Special Conditions

- Reservations

This RFP does not commit the City to award a contract, to defray any costs incurred in the preparation of a Proposal pursuant to this RFP, or to procure or contract for work.

- Financial Management and Accounting System Requirements

No consultant contract will be awarded to a consulting firm who does not possess an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

- RFP as a Public Record

All Proposals submitted in response to this RFP become the property of the City and thus become public records and, as such, may be subject to public review.

- Right to Cancel

The City reserves the right to cancel or change, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements.

- Additional Information

The City reserves the right to request additional information and/or clarification from any or all respondents to this RFP.

- Public Information

Consultants who wish to release information regarding the consultant selection process, contract award, or data provided by the City at any Public Hearing, must receive prior written approval from the City before disclosing such information to the public.

- Contract for Professional Services

The selected consultant will be required to sign the Professional Services Agreement, Attachment 1, and all other required certifications and documentation within fifteen (15) working days of the City Council awarding the contract.

- Conflict of Interest

The City has established a policy concerning potential conflict of interest in program management, design, and construction. This policy applies to all proposers and their proposed consultants/sub-consultants. See the sample Professional Services Agreement for additional information.

- Insurance Requirements

The City requires consultants doing business with it to obtain insurance, as described in the Professional Services Agreement. The required insurance certificates must comply with all requirements of the standards as described in the contract and must be provided with the executed Professional Services Agreement.

Attachments

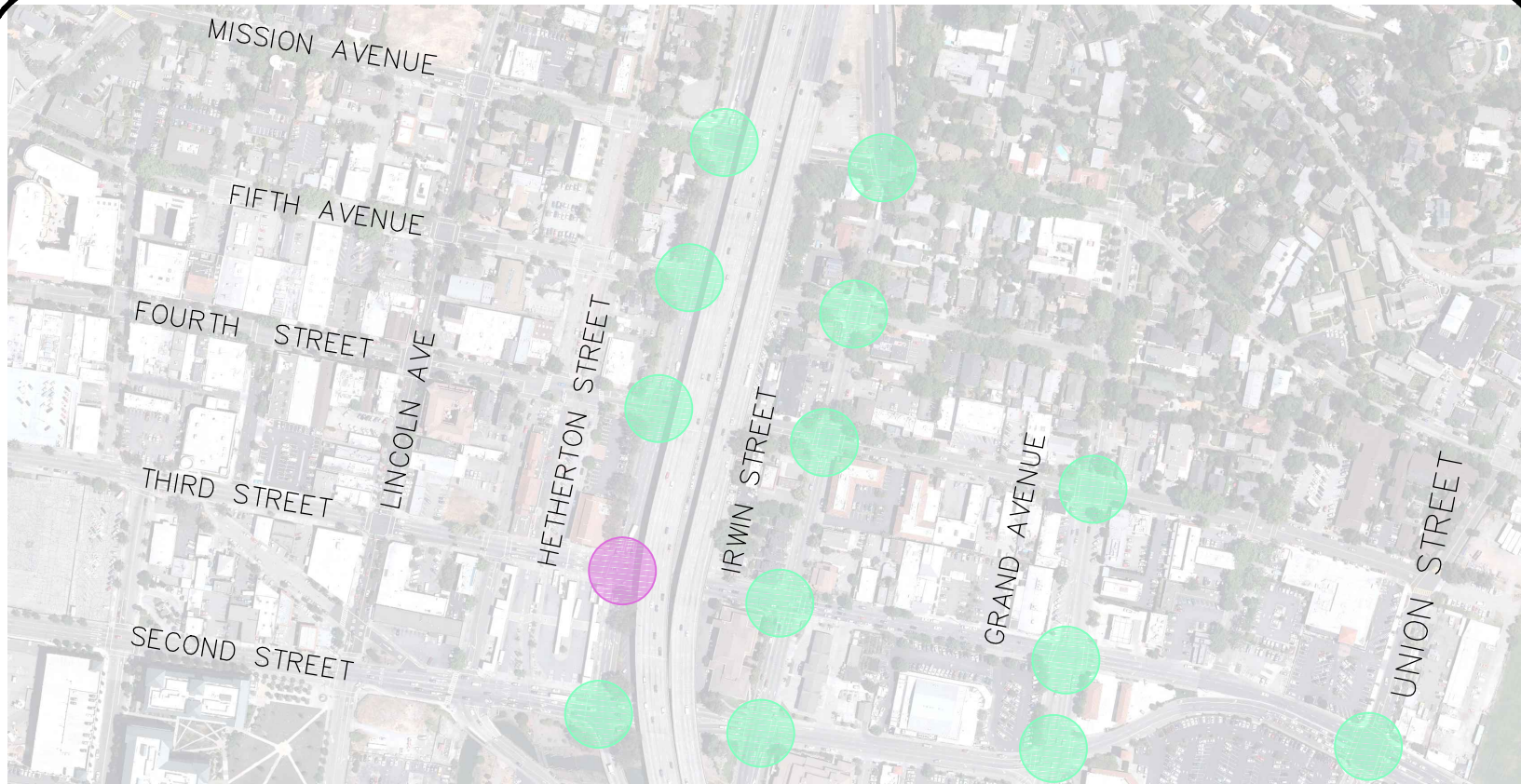
1. Exhibit A – Study Area

Thank you for your interest in contracting opportunities with the City of San Rafael.

Sincerely,



Jeff Stutsman
Associate Civil Engineer



 TRAFFIC SIGNAL INFLUENCED AREA

 3RD STREET AND HETHERTON STREET

ATTACHMENT A

N.T.S.



CITY OF SAN RAFAEL
DEPARTMENT OF
PUBLIC WORKS

**AGREEMENT FOR PROFESSIONAL SERVICES WITH
[NAME OF CONSULTANT]
FOR PROFESSIONAL ENGINEERING SERVICES**

This Agreement is made and entered into this _____ day of _____, 2016, by and between the **CITY OF SAN RAFAEL** (hereinafter "**CITY**"), and **[NAME OF CONSULTANT]** (hereinafter "**CONTRACTOR**").

RECITALS

WHEREAS, the **CITY** has determined that professional electrical engineering design services are required in connection with the 3RD Street and Hetherton Traffic Study; and

WHEREAS, the **CONTRACTOR** has agreed to render such services.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The Director of Public Works 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. **CONTRACTOR'S Project Director.** **CONTRACTOR** shall assign a single **PROJECT DIRECTOR** to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. **[CONTACT NAME]** is hereby designated as the **PROJECT DIRECTOR** for **CONTRACTOR**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute **PROJECT DIRECTOR**, for any reason, the **CONTRACTOR** shall notify the **CITY** within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

CONTRACTOR shall perform the duties and/or provide the services outlined in the Scope of Services marked as Exhibit "A," attached hereto, and incorporated herein.

3. **DUTIES OF CITY.**

CITY shall compensate **CONTRACTOR** as provided in Paragraph 4, and shall perform the duties as described in Exhibit "A" attached hereto and incorporated herein.

4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** on a time and materials basis for services rendered in accordance with the rates shown on the current fee schedule as described in Exhibit "A" attached and incorporated herein, in an amount not to exceed [COST].

Payment will be made monthly upon receipt by **PROJECT MANAGER** of itemized invoices submitted by **CONTRACTOR**.

5. TERM OF AGREEMENT.

The term of this Agreement shall commence upon the date of execution of this Agreement and end on [DATE] when the work shall have been completed, unless the parties agree to extend this Agreement for another 90 days, as approved in writing by City Manager.

6. 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 **CONTRACTOR** and any and all of **CONTRACTOR'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.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONTRACTOR** 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.

8. INSPECTION AND AUDIT.

Upon reasonable notice, **CONTRACTOR** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONTRACTOR** in connection with its performance

of its duties under this Agreement. **CONTRACTOR** shall fully cooperate with **CITY** or its agent in any such audit or inspection.

9. 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.

10. INSURANCE.

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

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

3. 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 **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.

4. If it employs any person, **CONTRACTOR** shall maintain worker's compensation and employer's liability insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both **CONTRACTOR** and **CITY** against all liability for injuries to **CONTRACTOR's** officers and employees. **CONTRACTOR's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **CITY**.

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

1. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additionally named insureds under the policies.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be primary 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 **CONTRACTOR'S** policies shall be at least as broad as ISO form CG20 01 04 13.

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

4. The insurance policies shall be specifically endorsed to provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance policies except upon ten (10) days written notice to the **PROJECT MANAGER**.

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.

C. Deductibles and SIR's. Any deductibles or self-insured retentions in **CONTRACTOR'S** insurance policies must be declared to and approved by the **PROJECT MANAGER** and City Attorney, 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 **CONTRACTOR** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. Proof of Insurance. **CONTRACTOR** shall provide to the **PROJECT MANAGER** or **CITY'S** City Attorney 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 **CONTRACTOR**. 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 **PROJECT MANAGER** and the City Attorney.

11. **INDEMNIFICATION.**

A. Except as otherwise provided in Paragraph B., **CONTRACTOR** 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 **CONTRACTOR’S** performance of its obligations or conduct of its operations under this Agreement. The **CONTRACTOR'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 **CONTRACTOR'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 **CONTRACTOR’S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONTRACTOR’S** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONTRACTOR’S** performance of or operations under this Agreement, **CONTRACTOR** 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 **CONTRACTOR** 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, **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend and hold harmless the **City Indemnitees** from and against any **CLAIMS** that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such **CLAIM** which is caused by the sole negligence or willful misconduct of **CITY**.

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.

12. NONDISCRIMINATION.

CONTRACTOR 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.

13. COMPLIANCE WITH ALL LAWS.

CONTRACTOR 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. **CONTRACTOR** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONTRACTOR** 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.

14. NO THIRD PARTY BENEFICIARIES.

CITY and **CONTRACTOR** 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.

15. 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:

Bill Guerin
Director of Public Works
City of San Rafael
111 Morphew Street
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director:

[CONTACT NAME]
[CONSULTANT]
[ADDRESS]

16. INDEPENDENT CONTRACTOR.

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

17. 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 **CONTRACTOR** 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 **CONTRACTOR** 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.

18. SET-OFF AGAINST DEBTS.

CONTRACTOR agrees that **CITY** may deduct from any payment due to **CONTRACTOR** under this Agreement, any monies which **CONTRACTOR** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

19. 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.

20. 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.

21. CITY BUSINESS LICENSE / OTHER TAXES.

CONTRACTOR shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONTRACTOR** 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 **CONTRACTOR** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. APPLICABLE LAW.

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

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

CITY OF SAN RAFAEL

CONTRACTOR

JIM SCHUTZ, City Manager

By: _____

Name: _____

Title: _____

ATTEST:

ESTHER C. BEIRNE, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney