

**REQUEST FOR PROPOSAL (RFP)  
FOR  
ENGINEERING DESIGN SERVICES  
FOR THE  
DOWNTOWN LIBRARY ASSESSMENT STUDY PROJECT**

**January 10, 2018**

**Introduction**

The City of San Rafael (City) hereby requests proposals from qualified consultants for the Downtown Library Assessment Study Project for the San Rafael Public Library located at 1100 E St. It is the intent of the City to hire a qualified consultant who can provide project management, preliminary assessments, proposed improvements, estimate of improvements costs and priority for implementation of improvements. The final product sought is a facility evaluation report.

Proposals shall be submitted by firms that have a capable and demonstrable background in the type of work described in the section entitled "Scope of Work" 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.

**Background**

The San Rafael Public Library was originally constructed in 1909. The library has undergone two expansions since this time, in the 1960s when an addition was added and the most recent in 2008 with the inclusion of an air conditioning system and double-paned windows. The library also underwent LED lighting retrofit in 2017. The intent of this study is to determine what improvements are necessary to sustain the facility in its present operating routine. The assessment study will include the examination of the roof, electrical, plumbing, accessibility and internal systems which are important to keeping these facilities functioning to determine what improvements are required.

The library building suffers from age-related issues and has a number of existing issues which will need review. The following are a few of the issues the library is currently experiencing or have experienced in the recent past that should be taken into consideration:

- Erratic HVAC operation
- Restrooms – accessibility to current restrooms, and whether additional restrooms are required by code
- Water leaks from the floor, walls, and roof
- Rodent and bug infestations
- Lack of fire detection and suppression system
- Sewage backflow into restrooms
- Sewer gas leakage into library office space
- Electrical deficiency – frequent overload of circuits
- Minimal ADA-compliance (especially in Children's room)
- Insufficient ADA parking

### Anticipated Schedule

- |  |  |
|--|--|
| ○ Advertise RFP                        | January 10, 2018                       |
| ○ Deadline for questions/clarification | January 22, 2018                       |
| ○ Pre-Bid Meeting                      | None for this project                  |
| ○ Proposals due to Public Works        | See the "Proposal" section of this RFP |
| ○ Consultant Interviews                | T.B.D.                                 |

### Scope of Services

The project will be completed in two phases. Phase 1 will constitute a review of the various systems and elements within the Library and determination of the "life expectancy" of the system as is. That is, how long the City can expect the systems to operate satisfactorily before intervention is required. Phase 2 will be the preparation of a report which identifies the systems that need to be replaced or upgraded to improve safety and operations, in order of priority based on findings summarized in Phase 1. This phase will also incorporate evaluation of compliance with respect to current codes and laws for all systems. This portion of the project should output, at a minimum, a table with life expectancy of systems and the associated costs for replacement or upgrade.

The City envisions the following scope of work:

#### **Task 1: Project Management and Coordination**

1. The consultant shall be responsible for providing all contract management and quality control services throughout the duration of the project. The consultant shall deliver a high-quality product within budget and on schedule.
2. The consultant shall meet periodically with the City to discuss the project, present improvement options, review alternatives, etc. For cost estimation, a total of two meetings may be assumed. These two meetings will be independent of those discussed under separate tasks identified elsewhere in this RFP.
3. The consultant shall provide monthly schedule updates in conjunction with submittals of invoices.

#### Deliverables:

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

#### **Task 2: PHASE ONE – Existing Conditions Assessment**

1. The consultant shall complete a thorough review of the existing library infrastructure and systems. The review should focus on estimating the life expectancy of the systems within the library. The infrastructure review shall include, but is not limited to:
  - Electrical systems (panels, transformers, circuits, etc.)
  - HVAC
  - Plumbing and restrooms, including sewer lateral and cleanout(s)
  - Roof and building systems (walls, floors, attics, crawl space, etc.)
  - Carpeting and interior amenities
  - ADA accessibility

The consultant shall coordinate inspection efforts with pertinent city departments for access to the library and its systems. This must include coordination with the City Project Manager and facilities management staff at a minimum. The consultant may also wish to consult with Library staff for information about current systems, and that may be arranged with the City Project Manager.

2. The consultant shall produce a draft memorandum for City review. Draft memorandum shall include such documentation as photographs of systems and/or infrastructure, especially those which are requiring replacement or upgrades. Consultant shall prepare a standard inspection/assessment review procedure such that all services are reviewed consistently. The memorandum shall include a table listing all facilities inspected, along with expected life expectancy based on engineering judgement to inform Phase 2 of the project. Draft memorandum shall be submitted to the City for review and comment.
3. The consultant shall produce a final memorandum summarizing the existing conditions of the library and addressing any City concerns presented as part of the review of the draft memorandum.

Deliverables:

- Draft existing conditions memorandum
- Final existing conditions memorandum

**Task 3: PHASE TWO – Facility Evaluation Report**

1. Based on the field assessment completed in Task 2, the consultant shall provide the City with a list of required improvements for the buildings to improve safety and operations, including anticipated timeline requirements for the improvements. The proposed improvements should also be prioritized and presented in a table format for simple review.
2. The consultant shall provide associated estimated costs to complete the proposed improvements. Consultant shall document the basis of all costs.
3. The consultant shall produce a draft report for City review and comment. Draft report shall also include all documentation from Phase 1 of this study, either as an appendix or an initial chapter of the analysis.
4. The consultant shall prepare a final facility evaluation report incorporating all comments from previous City reviews.

Deliverables:

- Draft facility evaluation report
- Final facility evaluation report

**Payment and Cost Estimate**

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, including labor, overhead, profit, and expenses, such as, but not limited to, transportation, communications, subsistence, materials, and any subcontracted items of work. 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, sealed envelope**.

Each invoice submitted to the City for payment shall contain a brief description of the work billed on that invoice, total billed to date, total paid to date, and amount remaining.

### **Proposal**

The Proposal shall be concise, well organized, and demonstrate an understanding of the Scope of Services as outlined in this RFP. Proposals shall be limited to no more than thirty-five (35) one-sided pages (8½"x11", or 11"x17" for fold-out drawings), inclusive of resumes, graphics, pictures, photographs, dividers, front and back covers, cover letter, etc. Proposal submittals shall consist of three (3) bound sets and one (1) PDF on flash drive; no emailed or faxed Proposals will be accepted.

Proposals shall be evaluated based on the Evaluation Criteria section of this RFP.

At a minimum, Proposals shall include:

1. Proposals must be received no later than **2:00 PM, local time, Monday, February 6, 2018**, at the Department of Public Works. Address to:  
  
City of San Rafael  
Public Works Department  
111 Morphew Street  
San Rafael, CA 94901  
Attn: Cindy Ray/Monique Fuhrman
2. Proposals shall be submitted in sealed packages and clearly marked with the name of the consultant and "**Downtown Library Assessment Study Project.**"
3. Cover letter signed by the person authorized to negotiate a contract for proposed services with the City on behalf of the Proposal team. The cover letter must state that the sample Professional Services Agreement is acceptable as-is.
4. Project understanding outlining the consultant's basic understanding of the project and identifying key issues to be addressed during the project and any insights.
5. A detailed project approach and level of effort, in accordance with the section entitled "Scope of Work" of this RFP.
6. A project schedule including at minimum, those tasks outlined in the section entitled "Scope of Work" of this notice.
7. A statement of Qualification (SOQ) that includes:
  - a. The proposer's experience and history in performing this type of work.
  - b. References of persons, firms, or agencies that the City may contact to verify the experience of the proposer; include phone numbers.
  - c. An organization chart setting forth the project manager and the staff.

- d. Experience for each individual expected to perform responsible portions of the work. Do not submit resumes for individuals who do not have a high probability of actually leading or working on the project.
- e. Experience for each sub-consultant.

The consultant shall be aware of the following:

- o Proposals and/or modifications to Proposals received after the hour and date specified in this RFP will be rejected and returned unopened to the proposer.
- o All Proposals shall be submitted according to the specifications set forth in the RFP. Failure to adhere to these specifications may be cause for rejection.
- o Once submitted, Proposals, including the composition of the consulting staff, shall not be changed without prior written consent.
- o All requests for clarification for this RFP must be made in writing by 5:00 pm on **Monday, January 22, 2018**. Consultants shall email Monique Fuhrman at [monique.fuhrman@cityofsanrafael.org](mailto:monique.fuhrman@cityofsanrafael.org)

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 Web site. 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 <https://www.cityofsanrafael.org/infrastructure-projects/>

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.

#### **Evaluation Criteria**

A review and selection committee, made up of City staff and other professionals, will evaluate the consultants based on the Proposals and, if necessary, an oral interview to determine which consultant is best qualified to perform the work for this project. The committee will then determine a ranking of the consultants at which time negotiations may begin with the most qualified consultant and only their cost Proposal will be opened. The consultant fee will be evaluated to determine if the amount of the fee is considered a reasonable cost for the work outlined in the Proposal. If the top ranked consultant has submitted a reasonable fee, the committee will make a recommendation to the Public Works Director that negotiations be opened to ensure that the top ranked consultant has a full understanding of the expectations of the City, that the scope reflects all tasks anticipated and that the fee reflects completion of the project to the satisfaction of the City. In the event that the City and the top ranked consultant are unable to come to an agreement as to scope and fee, the City reserves the right to close negotiations with the top ranked consultant and open negotiations with the second-ranked consultant. Once an agreement is reached involving the scope and fee, the Public Works Director will make a recommendation to the City Council to award the project to the selected consultant and to authorize the Public Works Director to enter into an agreement with that consultant. If the City Council is in agreement with the recommendation, City staff will proceed with the completion of the agreement and prepare the contract for execution.

The City will notify each consultant regarding the outcome of the Proposal selection process.

The City may reject any or all of the Proposals if it deems such action are in the public interest.

**Special Conditions**

- Professional Services Agreement  
The consultant selected to provide the scope of services shall use the City of San Rafael's standard Professional Services Agreement. A copy of the template of this agreement is attached to this RFP. Submittal of a Proposal is acceptance of the Professional Services Agreement. Contractually required insurance coverage and endorsement information is shown in the body of the document.
- 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.
- 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.

**Attachments**

1. City of San Rafael *Professional Services Agreement* Template (subject to change by the City Attorney's office if necessary)

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

Sincerely,



Monique Fuhrman  
Project Manager

**AGREEMENT FOR PROFESSIONAL SERVICES**

**FOR** \_\_\_\_\_

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and \_\_\_\_\_ (hereinafter "CONTRACTOR").

**RECITALS**

**WHEREAS,** \_\_\_\_\_; and

**WHEREAS,** \_\_\_\_\_;

**AGREEMENT**

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

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The \_\_\_\_\_ 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. \_\_\_\_\_ 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 services as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **DUTIES OF CITY.**

**CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as follows:

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4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** as follows:

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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 be for (\_\_\_\_) year(s) commencing on \_\_\_\_\_ and ending on \_\_\_\_\_. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period of (\_\_\_\_) year(s).

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 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. **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 or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additionally named insureds (for both ongoing and completed

operations) 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 or worker's 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, **CONTRACTOR** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONTRACTOR** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONTRACTOR** 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.

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**. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault.

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:

\_\_\_\_\_  
City of San Rafael  
1400 Fifth Avenue  
P.O. Box 151560  
San Rafael, CA 94915-1560

TO **CONTRACTOR**'s Project Director:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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