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:

   __________________________________________________________

   __________________________________________________________
4. **COMPENSATION.**

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

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) 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 Indemnites”), 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 Indemnites. However, to the extent that liability is caused by the active negligence or willful misconduct of the City Indemnites, the CONTRACTOR's indemnification obligation shall be reduced in proportion to the City Indemnites' 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 Indemnites 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 Indemnites or at CITY’S option reimburse the City Indemnites 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 Indemnites 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
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**

____________________________
JIM SCHUTZ, City Manager

**CONTRACTOR**

By:____________________________

Name:____________________________

Title:_____________________________

ATTEST:

____________________________
LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

____________________________
ROBERT F. EPSTEIN, City Attorney