



REQUEST FOR QUALIFICATIONS (RFQ) FOR COMPREHENSIVE USER FEE STUDY

Date Issued: August 23, 2019

Proposals Due: September 6, 2019

The City of San Rafael is seeking to engage the services of a qualified professional firm experienced in cost recovery to prepare a comprehensive review and evaluation of citywide user fees (User Fee Study).

Respondents to this RFQ shall submit completed proposals electronically by 5:00 p.m. on **September 6, 2019** to the following email address:

Nadine Atieh Hade
Finance Director
City of San Rafael
1400 Fifth Avenue, Room 204
San Rafael, CA 94901
nadine.hade@cityofsanrafael.org

Please contact Nadine Atieh Hade, Finance Director, if you have any questions:

Email: nadine.hade@cityofsanrafael.org

Phone: (415) 485-3062

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Introduction

The City of San Rafael (“City”) is requesting proposals for a Comprehensive User Fee Study. All proposals must be received electronically to nadine.hade@cityofsanrafael.org **by no later than 5:00 p.m. on September 6, 2019. Late proposals will not be considered.** The proposals shall be clearly marked **Proposal for Comprehensive User Fee Study**.

Proposals must be responsive to City’s request. The City will select a firm on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. Cost alone shall not be the determinative factor.

The request for proposals does not obligate the City to award a contract or complete the project, and the City reserves the right to cancel the request for proposals if deemed in its best interest.

About the City of San Rafael

The City of San Rafael was incorporated in 1874 and became a charter city in 1913. The City operates under the Council/Manager form of government and is governed by a five-member City Council, which comprises four councilmembers and a mayor. The City's mission is to enhance the quality of life and to provide for a safe, healthy, prosperous and livable environment in partnership with the community. The City has a staff of about 400 full-time employees and is a full-service city, which includes the following departments:

- City Attorney's Office
- City Clerk's Office
- City Manager's Office
- Community Development
- Community Services (Parks, Recreation, and Childcare)
- Digital Service and Open Government
- Economic Development and Innovation
- Human Resources
- Finance
- Fire
- Library
- Parking Services
- Police
- Public Works
- Sanitation District

The City's fiscal year begins on July 1 and ends on June 30. For Fiscal Year 2019-20, the City of San Rafael has a total operating budget of approximately \$135 million for all funds and the General Fund makes up approximately \$81 million of that total. While City operations generate revenue from various public services, such as licensing, permitting and building activity, the four primary sources of revenue for the General Fund are from sales tax, property tax, and transaction and use (TUT). See the City website <https://www.cityofsanrafael.org/departments/finance/> for the most recent City Operating and Capital Improvement Program Budget and Comprehensive Annual Financial Report. The last comprehensive user fee study was performed in 2011. The City is interested in having the user fees reviewed and updated.

Scope of Services

The objective of this RFQ is to receive proposals for a comprehensive user fee study. Project tasks shall include, but are not necessarily limited to, the following described below.

Prepare a User Fee Study for the City, which may include the following elements. If the consultant feels that additional tasks are warranted, they must be clearly identified in the consultant's proposal.

1. Work and meet with City staff to refine the project scope, purpose, uses and goals of the City's User Fee Study to ensure that the study will be both accurate and appropriate to the City's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
2. Meet with staff and conduct interviews as needed to gain an understanding of the City's processes and operations. Conduct a comprehensive review of the City's existing fees, rates, and charges.
3. Provide an analysis and recommendation for cost methodology options related to building permit and inspection-related activities.
4. Identify the total cost of providing each City service at the appropriate activity level and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees, rates, and charges by public entities including, but not limited to, Article XIII B, Section 8, Government Code 66014, Proposition 218, and Proposition 26.
5. Compare service costs with existing recovery levels. This should include any service areas where the City is currently charging for services, as well as areas where perhaps the City could charge, in light of the City's practices, or the practices of similar or neighboring cities.
6. Recommend potential new fees and charges for services that the City currently provides but does not have any fees and/or charges established. Recommendations should be based on practices by surrounding cities that may charge for similar services, industry best practices, or the consultant's professional opinion.
7. Recommend appropriate fees and charges based on the firm's analysis together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
8. Prepare a report that identifies each fee service, its full cost, recommended and current cost recovery levels. The report should also identify the direct cost, the indirect cost, and the overhead cost for each service.
9. Prepare a report that identifies the present fees, recommended fees, percentage change, cost recovery percentage, revenue impact and fee comparison with other County of Marin cities, Northern California cities or other California cities that are comparable to San Rafael. A survey comparison of rates and fees with similar cities is required.
10. Report on other matters that come to the firm's attention in the course of the evaluation that, in the proposer's professional opinion, the City should consider.
11. Prepare and deliver presentations to the City Council to facilitate their understanding of the plan and its implications for the City and make necessary adjustments as requested.
12. Prepare a final fee study report ("Master Fee Schedule") and provide a single Microsoft Excel and PDF file of the User Fee Study that can be made available to City staff. Available models, tables and graphs should be provided in Microsoft Excel and must include a mechanism to amend fees annually based upon the Consumer Price Index (CPI). Any Master Fee Schedule revisions developed shall also be made available to the City in Microsoft Excel and PDF format, providing the ability to add or delete and/or update information as needed.

Request for Qualifications (RFQ) for Comprehensive User Fee Study

Provide separate proposed rates for providing the following:

13. Consult with City staff should it become necessary to defend the City's User Fees as a result of any legal or other challenge (at an additional charge, if necessary).

The Consultant may recommend other tasks that it deems appropriate to achieve the objectives set forth in this RFQ.

Below are some key deliverables and dates to guide the completion of all tasks relating to the scope of services. We reserve the right to modify these dates as deemed necessary.

Event	Date
Begin work	September 20, 2019
Complete User Fee Study and draft Master Fee Schedule	March 6, 2020
Complete final Master Fee Schedule and all presentation materials, models, documents, etc.	May 15, 2020

Proposal Submission Requirements

The proposal shall be organized and submitted with the following elements:

- Cover page
- Table of Contents
- Executive Summary
 - Provide a brief summary describing the proposer's ability to perform the work requested, a history of the proposer's background and experience providing services, the qualifications of the proposer's personnel to be assigned to this project, any subcontractor, sub consultants, and/or suppliers and a brief history of their background and experience, and any other information called for by this request for proposal which the proposer deems relevant, including restating any exceptions to this request for proposal. This summary should be brief and concise to apprise the reader of the basic services offered, experience and qualifications of the proposer, staff, subcontractors, and/or suppliers.
- Questionnaire
 - Proposer shall provide responses and information to fully satisfy each item in the Questionnaire (see section below). Each question item should be presented before the proposer's response.
- Attachments (if applicable)

Please keep your proposal to no more than fifteen (15) pages in length. This page limit includes the cover page, table of contents, executive summary, questionnaire, and any supplemental attachments.

Questionnaire

A. Company and General Information

- Company name and address.
- Letter of transmittal signed by an individual authorized to bind the respondent, stating that the respondent has read and will comply with all terms and conditions of the RFQ.
- General information about the primary contact who would be able to answer questions about the proposal. Include name, title, telephone number and email address of the individual.

B. Qualifications and Experience of the firm

- Describe your firm's history and organizational structure. Include the size of the firm, location of offices, years in business, organizational chart, name(s) of owner(s) and principal parties, and number and position titles of staff.
- What is the primary business of the parent company and/or affiliates?
- Which office(s) of your organization will have primary responsibility for managing the user fee study?
- What is your firm's experience conducting user fee studies? Identify the studies performed by your firm in the last five years.
- Comment on other areas that may make your firm different from your competitors.

C. Questions/Response to Scope of Services

- Describe the methods by which your firm will fulfill the user fee study requested in the scope of services. In responding to the Scope of Services, please be thorough in describing your firm's methodology for completing User Fee Studies, and how your firm will address all services identified in the scope of this request.
- Provide a statement of the service(s) that differentiate your firm from other respondents.

D. Fees

- Provide your fees for the proposed service.
- Outline billing and payment expectations, including timing and method of payment.
- Describe any remaining fees not already detailed above.
- Present a specific "not to exceed" fixed fee, including associated fees (i.e., printing costs, attendance at meetings, travel).

E. References

- Provide a list of the municipal agencies for which the respondent has conducted a User Fee Study within the past three years.
- Provide the following information for three projects that are similar in size and scope to the project requested by this proposal:
 - Name, address, and telephone number of the agency
 - Time period for the project
 - Brief description of the scope of the review
 - Reference contact name and telephone number

F. Implementation Schedule

Include an implementation schedule and note key project milestones and timelines for deliverables. Identify any assumptions used in developing the schedule.

Evaluation of Proposals

The project's core implementation team, composed of City staff, will evaluate all proposals in accordance with the criteria listed below. The City team members, in applying the major criteria to the proposals, may consider additional criteria beyond those listed. During the evaluation period, the team may elect to interview some or all the proposing firms.

The final selection will be the firm which, in the City's opinion, is the most responsive and responsible, meets the City's requirements in providing this service, and is in the City's best interest. The City maintains the sole and exclusive right to evaluate the merits of the proposals received.

Consultants will be objectively evaluated based on their responses to the project scope outlined in the RFQ. The written proposal should clearly demonstrate how the firm could best satisfy the requirements of City.

Proposals will be evaluated based on the following criteria:

- Thoroughness and understanding of the tasks to be completed
- Background and experience in organizational analysis evaluation
- Staff expertise and overall experience of personnel assigned to the work
- Time required to accomplish the requested services
- Responsiveness to requirements of the project
- Recent public sector experience, preferably in a municipal setting, conducting similar studies
- Costs

Although price for the services will be an important part of the consideration for award of the project, the City will consider the consultant's qualifications, expertise and level of professional service in the award of the project.

Selection Process

Each of the proposals received will be evaluated and determined if it meets the stated requirements. Failure to meet these requirements will be a cause for eliminating the consultant from further consideration. The City shall not be liable in any way for any cost incurred by any consultant or in the preparation of its proposal in response to this RFQ nor for obtaining any required insurance. The City reserves the right to reject any and all proposals, to waive any technicalities, informalities and irregularities, to accept or reject all or part of proposals, and to be the sole judge of the suitability of the proposals offered.

Evaluation of the proposals will be made by City staff as deemed appropriate by the City. In addition to evaluating written proposals, twenty-minute oral interviews may be requested to allow for a formal presentation by the proposer. Final selection will be made by City staff.

Timing and Schedule

We will make every effort to administer the RFQ process in accordance with the terms and dates outlined below. However, we reserve the right to modify the RFQ process and dates as deemed necessary.

Event	Time	Date
RFQ Published and distributed		August 23, 2019
Proposal submission deadline	5:00 PM	September 6, 2019
Proposals reviewed and evaluated by staff		September 13, 2019
Contract executed/work begins		September 20, 2019

Additional Information

All responses to this RFQ will become the property of the City of San Rafael.

The RFQ does not commit the City to award a contract or to pay any costs incurred in the preparation of the company's proposal. The City reserves the right to modify or cancel this RFQ in part or in its entirety and to accept or reject any or all of all proposals received if they do not meet the minimum requirements of this RFQ. The City also reserves the right to negotiate with the selected company to revise the scope of services if necessary, including modifying the services requested, to more closely match City needs.

If your firm is awarded the contract, your services (as well as those provided by other members of the team) will be subject to the terms of the Professional Services Agreement, which is attached to this RFQ. Unless the parties agree otherwise at the time the contract is signed, payment under the Agreement shall be made according to Section 4 ("Compensation"). Your company should review the terms of the Agreement to ensure that the proposal is consistent with its provisions and include in the proposal an acknowledgement of acceptance of those provisions, including requirements for indemnification and insurance. If your company takes exception to any of the terms, such concerns or exceptions must be expressly stated in the proposal.

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 up to (____) 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 additional insureds (for both ongoing and completed

operations) under the policies.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be "primary and non contributory" 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. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONTRACTOR** under this agreement.

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, then, to the extent permitted by law including without limitation, Civil Code sections 2782, 2782.6 and 2782.8, **CONTRACTOR** 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 **CONTRACTOR**, 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.

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. 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.

23. APPLICABLE LAW.

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

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed 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.

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:

LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

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

By:_____

Name:_____

Title:_____