



**REQUEST FOR PROPOSAL (RFP)
FOR
ENGINEERING DESIGN SERVICES FOR THE
SCHOEN PARK MODIFICATIONS AND
ROTARY MANOR CULVERT REPLACEMENT PROJECTS**

September 4, 2019

Introduction

The City of San Rafael (City) hereby requests proposals from qualified consultants for the preparation of contract documents for both the Schoen Park Modifications and Rotary Manor Culvert Replacement projects. It is the intent of the City to hire a qualified consultant who can facilitate environmental compliance and permitting clearance, design, and construction support services (at City's option). The final product sought is construction contract documents including plans, specifications, and cost estimates ready for bid.

Background

Project A: Schoen Park Modifications

Schoen Park is a small playground in the canal community of San Rafael and is located along Spinnaker Point Drive. The Tiscornia Marsh project, initiated by the Marin Audubon Society, is proposing to restore the marsh and increase the height of the levee behind Schoen Park thus encroaching into the playground area. Additionally, lack of available parking in the canal area has been a public concern for many years.

After considering the community's needs and following extensive upgrades to playground equipment located at the nearby Pickleweed Park, the City has decided to repurpose the Schoen Park area. The Schoen Park Modifications project will remove the existing Schoen Park playground and create angled parking spaces in its place. The attached preferred design alternative shows a conceptual layout for use in the final design.

Project B: Rotary Manor Culvert Replacement Project

Rotary Manor, located on private property in the City's Sun Valley neighborhood, includes a corrugated metal pipe culvert which has failed requiring rehabilitation and/or full removal and replacement. An **optional** pre-bid walk-through has been scheduled for **Thursday, September 12, 2019 at 10 AM** at 1821 Fifth Avenue, San Rafael, CA 94901. Please note that the project is in a steep wooded area, plan accordingly.

The Consultant is hereby made aware that the two projects herein discussed are two separate City projects. Each project will require separate project deliverables, CEQA and regulatory permitting submittals, invoicing, etc.

Scope of Services

The City is seeking consulting services for the following tasks (separated by respective project):

Project A: Schoen Park Parking Expansion

Task A1: 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. These meetings will be independent of those discussed under separate tasks identified elsewhere in this RFP. When appropriate, conference calls may take the place of meetings.

Deliverables:

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

Task A2: Engineering Design

1. After reviewing the preferred alternative design prepared by the City, the consultant shall produce 60% and 100% PS&E submittal packages for City review.
2. The consultant shall prepare final bid documents incorporating all comments from previous reviews. Final plans shall be plotted electronically to PDF in 22"x34" size and shall be signed by the engineer in responsible charge licensed in the State of California and ready for reproduction.
3. The plans shall be drawn using AutoCAD 2014, or a more recent version.
4. Specifications shall be written in the format of the Caltrans standard specifications. The City will provide its specifications template. Specifications shall not be written in CSI format.

Assumptions:

- Topographic survey for the Schoen Park project will be City-furnished
- The preferred alternative design layout will be provided to the Consultant, in electronic format, by the City

Deliverables:

- 60% and 100% PS&E submittals in electronic (PDF, AutoCAD, Word, & Excel) format
- A letter report summarizing review comments and the resolution of the review comments
- Final bid documents in electronic format

Task A3: Environmental Compliance and Permitting

1. The Consultant shall prepare California Environmental Quality Act (CEQA) documents and any associated technical studies required to clear the project for construction.
2. The Consultant shall be responsible for preparing, submitting and obtaining all required regulatory permits and environmental documentation required by State, local, and jurisdictional agencies needed to ensure this project is cleared for construction.

3. All environmental documents shall be prepared in preliminary and final draft stages for City review and shall incorporate any comments made during the preliminary document review.
4. The Consultant shall attend any meetings required to obtain CEQA approval, including attendance at a City Council meeting if necessary.

Deliverables:

- Preliminary and final permit applications for submittal by the Consultant. It is anticipated that a Joint Aquatic Resource Permit Application (JARPA) will be submitted. The City's preference is to have any application fees associated with permits be included in the Consultant's fee proposal as a reimbursable expense.
- Preliminary and final CEQA documentation

Task A4: Final Bid Phase and Bid Phase Support

1. The Consultant shall respond to questions concerning the plans, specifications, and estimates prior to bid opening and prepare contract addenda, if required.

Assumptions:

- The Consultant's budget shall cover up to two addenda.

Deliverables:

- Prepare contract addenda, if required, for distribution by the City including answers to bidder's questions

Task A5: Construction Support Services

1. The City anticipates performing this task in-house. Should technical support during construction become necessary, the City and Consultant will discuss this task at that time.

Project B: Rotary Manor Culvert Replacement Project

Task B1: 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. These meetings will be independent of those discussed under separate tasks identified elsewhere in this RFP. When appropriate, conference calls may take the place of meetings.

Deliverables:

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

Task B2: Engineering Design

1. The consultant shall produce 30%, 60%, and 90% PS&E submittal packages for City review. Consultant shall retain the services of a licensed surveyor to obtain topographic survey; no boundary survey for identifying property lines is requested at this time.

2. The consultant shall prepare final bid documents incorporating all comments from previous reviews. Final plans shall be plotted electronically to PDF in 22"x34" size and shall be signed by the engineer in responsible charge licensed in the State of California and ready for reproduction.
3. The plans shall be drawn using AutoCAD 2014, or a more recent version.
4. Specifications shall be written in the format of the Caltrans standard specifications. The City will provide its specifications template. Specifications shall not be written in CSI format.

Deliverables:

- 30%, 60%, 90% and final PS&E submittals in electronic (PDF, AutoCAD, Word, & Excel) format
- A letter report summarizing review comments and the resolution of the review comments
- Final bid documents in electronic format

Task B3: Environmental Compliance and Permitting

1. The Consultant shall prepare California Environmental Quality Act (CEQA) documents and any associated technical studies required to clear the project for construction.
2. The Consultant shall be responsible for preparing, submitting and obtaining all required regulatory permits and environmental documentation required by State, local, and jurisdictional agencies needed to ensure this project is cleared for construction. To facilitate this, the Consultant shall present at the County's MPC meeting.
3. All environmental documents shall be prepared in preliminary and final draft stages for City review and shall incorporate any comments made during the preliminary document review.
4. The Consultant shall attend any meetings required to obtain CEQA approval, including attendance at a City Council meeting if necessary.

Deliverables:

- Preliminary and final permit applications for submittal by the Consultant. It is anticipated that a JARPA application will be submitted. The City's preference is to have any application fees associated with permits be included in the Consultant's fee proposal as a reimbursable expense.
- Preliminary and final CEQA documentation

Task B4: Final Bid Phase and Bid Phase Support

1. The Consultant shall respond to questions concerning the plans, specifications, and estimates prior to bid opening and prepare contract addenda, if required.

Assumptions:

- The Consultant's budget shall cover up to two addenda.

Deliverables:

- Prepare contract addenda, if required, for distribution by the City including answers to bidder's questions

Task B5: Construction Support Services (Optional task and may not be awarded at this time)

1. The Consultant shall be available to attend construction meetings (in person or via telephone) at the City's request. For cost estimation, up to two (2) meetings may be assumed. These meetings will be independent of those discussed under separate tasks identified elsewhere in this RFP.
2. The Consultant shall be available to be called to the site in response to questions arising from the progress of the work.
3. The Consultant shall review all material submittals and shop drawings as required by the Special Provisions. For cost estimation, a review of up to three submittals may be assumed.
4. The Consultant shall respond to Request for Information (RFIs) from the contractor when called for by the City and prepare modifications or revisions that are related to the project's original scope and character. For cost estimation, a review of up to two RFIs may be assumed.

Deliverables:

- Attend meetings/conference calls during construction
- Response to RFIs, material submittals, and shop drawings from the contractor
- Plan revisions that are related to the project original scope and character

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 and contract hourly rates charged to the project on a monthly basis. 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 a simple letter proposal which is 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 eight (8) one-sided pages (8½"x11", or 11"x17" for fold-out drawings), inclusive of scope and cover letter. Do not submit resumes, references, organizational charts, graphics, pictures, photographs, dividers, or front and back covers. Proposal submittals shall consist of one (1) PDF emailed per the requirements below:

1. Proposals must be received via email no later than **3:00 PM, local time, on October 2, 2019**, at Theo.Sanchez@CityofSanRafael.org.
2. 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.

The Consultant shall be aware of the following:

- All requests for clarification for this RFP must be made in writing at least 96 hours prior to the due date as set forth in this RFP. Consultants shall contact Theo Sanchez at the following e-mail address: Theo.Sanchez@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/projects-out-to-bid/>.

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.

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.

Attachments

1. City of San Rafael *Professional Services Agreement* Template (subject to change by the City Attorney's office, if necessary).
2. Schoen Park Modifications Preferred Design Alternative

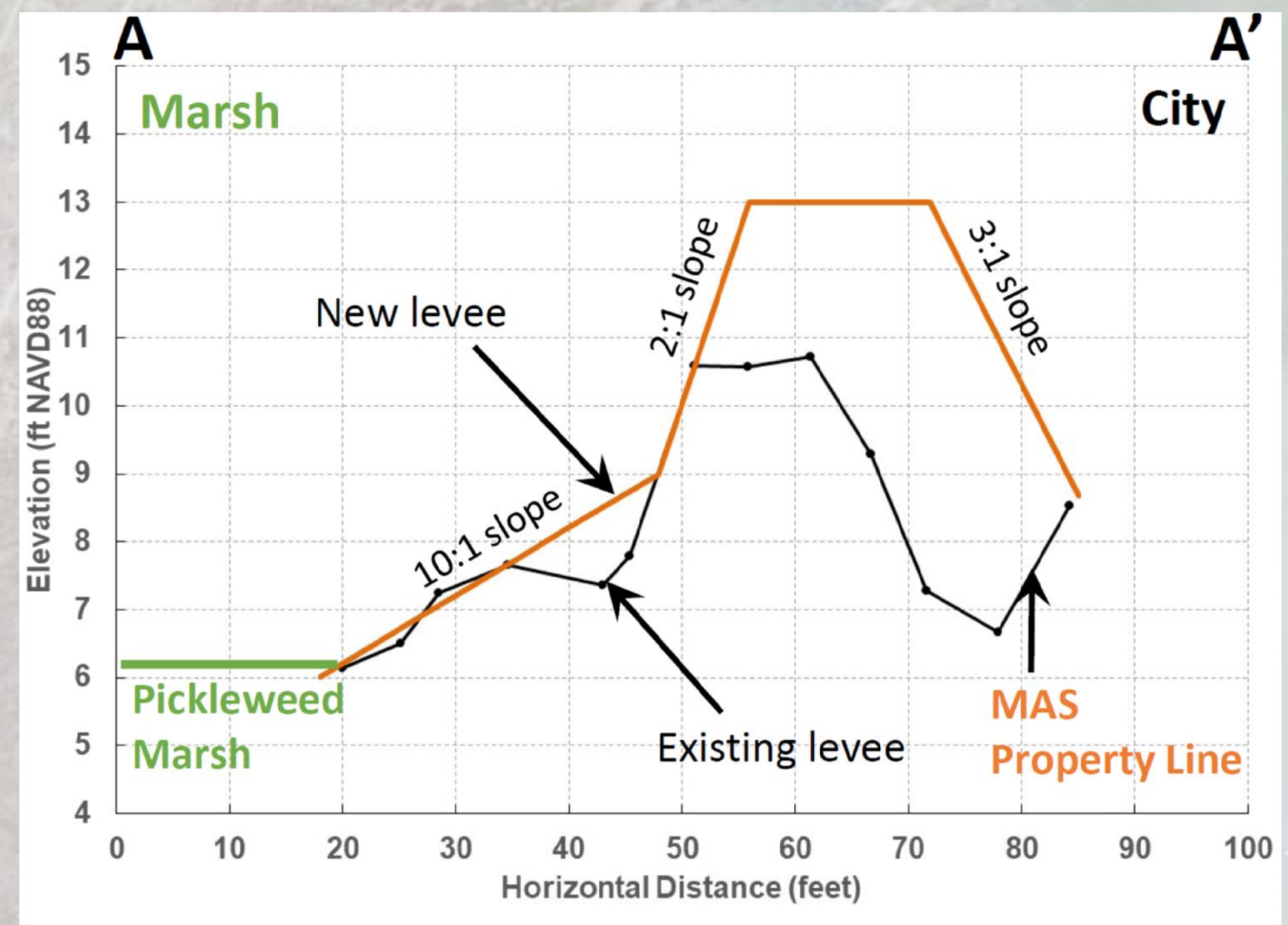
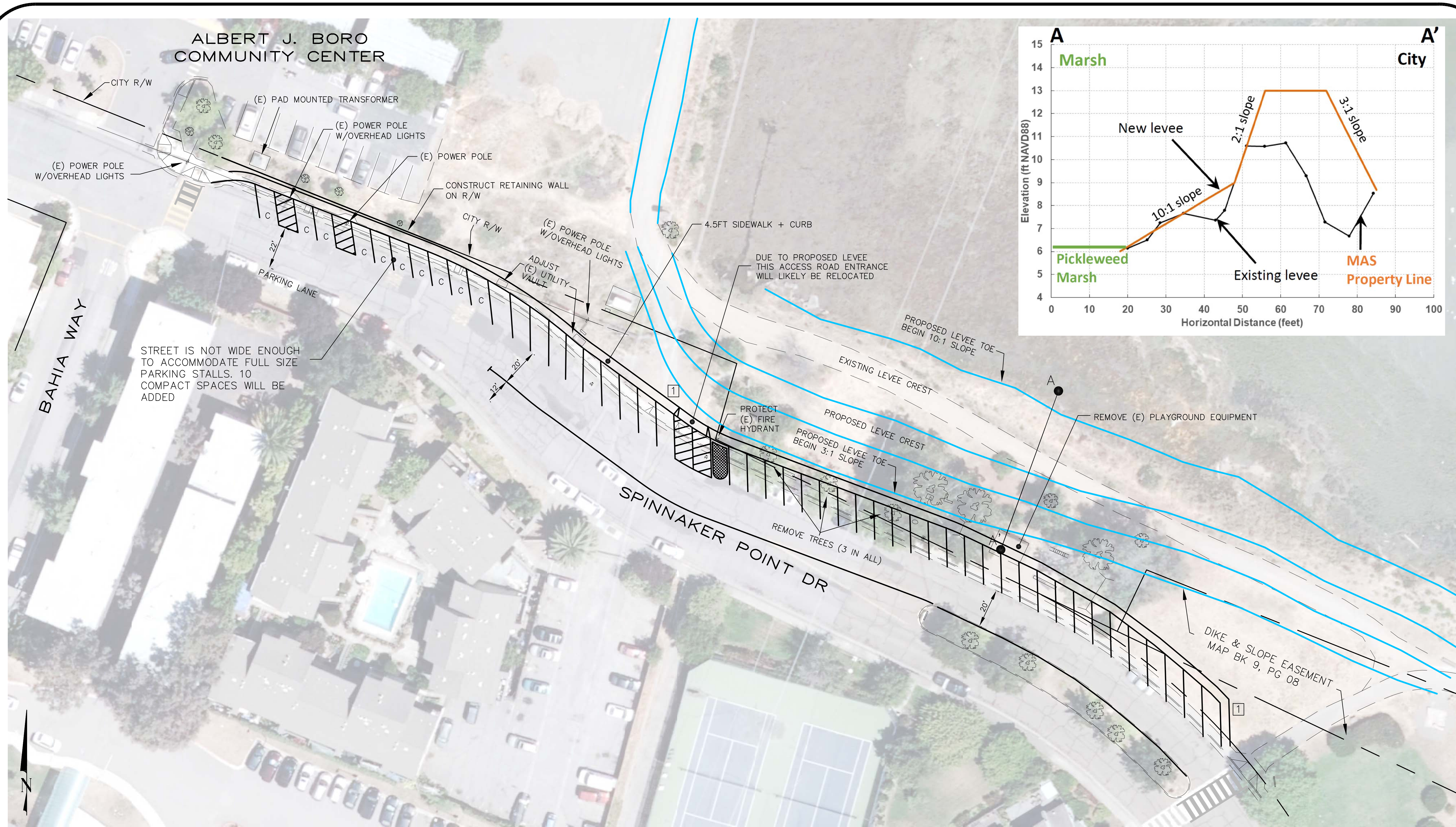
Thank you for your interest in contracting opportunities with the City of San Rafael.

Sincerely,



Theo Sanchez
Associate Civil Engineer

Sep 04, 2019 - 1:57pm - USER TheoS
 R:\18-Streets\16.01-Active Construction\Projects\16.01.203-Schoen Park Parking Expansion\Design\Plans\Proposed Schoen SchoenParking.dwg - TheoS.dwg



**SCHOEN PARK MODIFICATIONS:
PREFERRED DESIGN ALTERNATIVE**

EXISTING PARKING:	26
PROPOSED PARKING:	47
STANDARD (18'H x 10.5'W):	31
COMPACT (15'H x 9.3'W):	10
NET GAIN:	21

1 ADDITIONAL OVERHEAD LIGHTING TO BE ADDED



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:_____