



**REQUEST FOR PROPOSAL (RFP) FOR  
DESIGN AND ENVIRONMENTAL SERVICES FOR THE  
MCSTOPPP FULL TRASH CAPTURE DEVICE PROJECT  
June 8, 2020**

**Introduction/Background**

The City of San Rafael (City) hereby requests proposals from qualified engineering Consultants for design and environmental clearance services associated with the City's Marin County Stormwater Pollution Prevention Program (MCSTOPPP) Full Trash Capture Device Project (Project).

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.

**Trash Provisions**

On April 7, 2015, the State Water Board adopted an Amendment to the Water Quality Control Plan for Ocean Waters of California (Ocean Plan) to Control Trash and Part 1 Trash Provision of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries (ISWEBE Plan). Together, they are collectively referred to as 'the Trash Amendments'. The project objective for the Trash Amendments is to provide statewide consistency for the Water Boards' regulatory approach to protect aquatic life and public health beneficial uses, and reduce environmental issues associated with trash in state waters, while focusing limited resources on high trash generating areas.

The City of San Rafael is required to demonstrate 100 percent compliance with the Trash Provisions by December 1, 2030. Full compliance with the Trash Provisions requires cities to install, operate, and maintain State-certified Full Capture System (FCS) devices that capture all trash down to 5 millimeters in size from defined Priority Land Use (PLU) areas. These include all industrial, commercial, mixed-use, high-density residential, and public transportation station areas.

Initial costs for complying with the Trash Provisions will depend on the types of FCS devices selected, size (i.e., large vs small), installation costs, and the total number of devices installed. The type and number of FCS devices installed will depend on PLU areas and the stormwater infrastructure that serves those areas. Other long-term cost considerations include maintenance and replacement of the FCS devices which will depend on the qualities of the drainage areas filtering through the devices including acreage, land use, perviousness, flow rates, etc.

**MCSTOPPP**

In 2019, the County of Marin applied for Environmental Protection Agency (EPA) funding from the San Francisco Water Quality Improvement Fund to help mitigate the cost of installing several full trash capture systems throughout the County. On August 20, 2019, the County Board of Supervisors, on behalf of MCSTOPPP, accepted grant funds in the amount of \$685,000, thus funding the Marin County Stormwater Pollution Prevention Program Control Infrastructure Project (Infrastructure Project) administered by MCSTOPPP staff.

The goals of the Countywide Infrastructure project are to: 1) improve water quality in the San Francisco Bay by reducing and preventing trash in stormwater discharges, 2) monitor the success of MCSTOPPP

implementations of trash pollution prevention, and 3) share lessons learned from trash control efforts regionally and statewide.

The Infrastructure Project grant funds will be used to financially support various sub-projects administered either by MCSTOPPP or by one of the 11 local jurisdictions participating in the MCSTOPPP program. Sub-projects include:

1. Implementing a range of trash capture planning and pollution prevention public outreach efforts.
2. Purchasing of one large full capture device for the MCSTOPPP member agency with the highest trash load. At this time, MCSTOPPP has indicated that the City of San Rafael would be the member agency to receive grant funds in the approximate amount of \$597,000, which must be used for purchase and installation of the device (not design or environmental work).
3. Purchasing and installing numerous small trash capture devices for various MCSTOPPP member agencies. The member agencies will identify high priority areas for the small trash capture devices.

To access these grant funds available through MCSTOPP, City staff have recommended the City Council approve entering into a Memorandum of Understanding (MOU) with the County at the June 15, 2020 City Council meeting. Any City projects seeking to use these grant funds must be completed by June 30, 2024.

#### Full Trash Capture Device

As noted above, the City is in a very favorable position to be a sub-recipient of grant funds for installation of one full trash capture device. During preliminary discussions with MCSTOPPP staff, it is believed that installation of this device would be best suited adjacent to one of the City's existing stormwater pump stations. Specifically, the City is considering the pump stations located at 390 Canal Street or 3780 Kerner Boulevard. Each site has many constraints that may govern the size of the device to be installed, how it will be maintained, what regulatory permitting agencies may be involved, what utility conflicts may exist, etc.

The City is seeking to obtain the services of a qualified consulting firm to perform design and engineering services to determine the best location for installation of one full trash capture device.

#### Anticipated Schedule

- Proposals due to Public Works See Item 1 under "Proposal Requirements"
- Consultant Interviews Thursday, July 9, 2020 between 10 AM and 2 PM  
via MS Teams
- Award Contract by City Council August 3, 2020
- Notice to Proceed August/September 2020

#### Scope of Services

The City is seeking consulting services for the following tasks:

##### **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.
2. The Consultant shall meet periodically with the City to discuss the project.

Assumptions:

- Coordination meetings are expected to occur on an as-needed basis at the direction of the City.
- Meetings will include a kick-off meeting and sit-down review of redline comments resulting from peer reviews.

Deliverables:

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

**Task 2: Feasibility Study**

1. The Consultant shall meet with stakeholders, including the City and MCSTOPPP staff, to discuss the opportunities and final scope of work to be included in the study. The intent of this study is to determine what the scope of work should be during Task 3 below.
2. The Consultant shall conduct a site visit and preliminary assessment to analyze project areas for potential issues such as utility conflicts, right-of-way/property size constraints, environmental issues, accessibility issues, and drainage.
3. The Consultant shall evaluate and recommend State-certified FCS devices after coordinating with FCS device vendors. The recommended FCS device will be incorporated into the construction documents identified in Task 3 below.
4. The Consultant shall collect all relevant data and as-built information that may assist in making a recommendation for the FCS device.
5. The Consultant shall consider the hydrology/hydraulics of the existing storm drain system when sizing the FCS device.
6. Develop a schematic design (35% conceptual design) for the recommended location for a FCS device that meets the objectives and location decisions of the City.
7. Develop a memorandum-style feasibility report outlining what locations were considered for a FCS device, pros/cons of each site, including but not limited to, site constraints, utility conflicts, right of way constraints, conceptual design schematic, etc. The memorandum must include financial information including order-of-magnitude construction cost estimate and operation and maintenance expenses of the FCS devices for a 20-year period. Include additional costs not considered here, if applicable.
8. Any element of work not specifically identified in this scope, but which is necessary to accomplish the intent of this Task should be included in the Consultant's proposal.

Deliverables:

- Feasibility study memorandum

**Task 3: Design**

1. The Consultant shall conduct a site visit and preliminary assessment to analyze project areas for potential issues such as utility conflicts, right-of-way/property size constraints, environmental issues, accessibility issues, and drainage.
2. The Consultant shall provide City staff with draft letters for the City to use in coordinating with all utility companies to obtain existing utility record plans, as-builts, schematics, etc. The existing utility information shall be shown on the final design plans.
3. Conduct full underground survey to determine utility conflicts and pipe depth at each specified location.
4. The Consultant shall coordinate with pertinent regulatory agencies, stakeholders, material and equipment suppliers, etc.
5. The Consultant shall conduct all field, topographic and control surveys, prepare all geotechnical studies and reports, and complete all design calculations. All topographic survey, property lines, and easements shall be mapped and accurately provided in AutoCAD format for use during design.
6. The Consultant shall produce 65%, 95%, and 100% PS&E submittal packages for City review.
7. 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.
8. The plans shall be drawn using AutoCAD 2014, or a more recent version.
9. Specifications shall be written in the format of the Caltrans standard specifications. The City will provide boiler plate information.
10. The schedule of items shall address all items of work as specifically as possible and shall indicate as precisely as possible the quantities.

**Deliverables:**

- Utility coordination letters
- 65%, 95%, and 100% PS&E submittals in electronic (PDF, AutoCAD, Word and Excel) format
- A letter report summarizing review comments and the resolution of the review comments
- Final bid documents in electronic format

**Task 4: Environmental Compliance and Permitting**

1. The Consultant shall be responsible for preparing, submitting and obtaining all required permits and environmental review documentation required by State, local, and jurisdictional agencies needed to ensure this project is cleared for construction.
2. The Consultant shall prepare appropriate California Environmental Quality Act (CEQA) documents and any associated technical studies required to clear the project 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. For the purposes of providing a scope of services and Consultant fee for this task, the following environmental documents, studies, permits, agreements, and activities should be anticipated:
  - Department of Fish and Wildlife
  - RWQCB Clean Water Act Section 401 Water Quality Certification
  - US Army Corps of Engineers CWA Nationwide Permit
  - San Francisco BCDC Permit
  - Attendance and presentation at a Marin Project Coordination (MPC) meeting ([https://www.marincounty.org/~media/files/departments/pw/mcstoppp/creeks/mpc\\_flyer.pdf](https://www.marincounty.org/~media/files/departments/pw/mcstoppp/creeks/mpc_flyer.pdf))

Deliverables:

- Preliminary and final permit applications for submittal by the City
- Preliminary and final CEQA documentation for submittal by the City
- Attendance and presentation at one MPC meeting

**Task 5: Bid Phase Support (this task is optional and may not be awarded at this time)**

1. The Consultant shall respond to questions concerning the Consultant-prepared plans and Consultant-prepared specifications prior to bid opening and prepare contract addenda, if required.
2. The Consultant shall assist in the review construction bids received and make a recommendation to the City for award of construction contract.

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
- Prepare recommendation to the City for the award of the construction contract

**Task 6: Construction Support Services (this task is optional and may not be awarded at this time)**

1. The Consultant shall attend construction meetings (in person or via telephone) on an as-needed basis, including the pre-construction meeting, to respond to questions concerning the plans, specifications and estimates. For cost estimation, up to eight meetings may be assumed. These meetings will be independent of those discussed under separate tasks identified elsewhere in this RFP.
2. The Consultant shall review all material submittals and shop drawings as required by the Special Provisions and as they pertain to Consultant-prepared plans. For cost estimation, a review of up to 10 submittals may be assumed.

3. 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 five (5) RFIs may be assumed.
4. The Consultant shall participate in the final walk through of the constructed project and assist in the preparation of "punch list" items in need of work.

Assumptions:

- The City will contract out separately for materials sampling/testing and compaction testing; it will not be part of this contract.

Deliverables:

- Attend meetings during construction, which includes the pre-con meeting with contractor.
- Response to RFIs, material submittals, and shop drawings from the contractor
- Plan revisions that are related to the project original scope and character
- Review contract change orders, if requested by the City
- Meeting agendas and minutes, if requested by the City

**City Responsibility and General Assumptions**

The following is assumed for this scope of services:

1. Answering non-technical questions during advertisement period of this RFP. Clarification offered by the City to one Consultant shall be distributed to all known participants at the City's discretion.
2. Reviewing all Consultants' deliverables and providing comments in a timely manner.
3. Any City-owned utility underground maps and any existing information in the possession of the City necessary to complete the design.

**Proposal Requirements**

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 20 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.

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, on June 26, 2020. Submit Proposals via email to Hunter Young at [hunter.young@cityofsanrafael.org](mailto:hunter.young@cityofsanrafael.org)**. Hardcopies may be requested at a later time. The maximum file size of the Proposal shall be limited to 15 MB. It is the Consultant's responsibility to ensure that the Proposal is received on time. If the Proposal is not submitted before the deadline, it will be rejected. It is recommended that the Consultant leave sufficient time for the receiving party to confirm receipt.
2. Proposals shall be submitted with the subject line of the email marked "MCSTOPPP Full Trash Capture Device Project."

3. Cover letter shall include the primary Consultant's name and business address, as well as the Project Manager's name, telephone number and email address. Summarize your understanding of the project and briefly introduce your team. The cover letter shall be 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 (PSA) is acceptable as-is. Please do not submit a Proposal and subsequently request changes to the PSA.
4. Experience and Technical Competence – The Consultant shall describe his or her experience in completing similar consulting efforts, especially for bridge construction. List in reverse chronological order for the last two years projects completed for which your firm provided construction management/inspection services, with an emphasis in bridge related work. Name of clients, project managers, telephone numbers, type of work performed, and the value of the consulting contracts shall be included. Projects currently being performed may be submitted for the City's review.
5. Project Organization and Key Personnel
  - a. Provide a Proposal that includes a discussion of the Consultant's staffing plans and level of personnel to be involved, their qualification, experience, resumes, roles, and the name of the individual who will be in overall charge and responsibility for coordination with the City. Do not submit resumes for individuals who do not have a high probability of actually leading or working on the project. It is anticipated that a Resident Engineer and Field Inspector will be the key personnel providing construction management services for the Project.
  - b. Identify proposed sub-consultants that will be retained to perform specified items of work listed in the Scope of Services.

The Consultant shall be aware of the following:

- 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.
- 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.
- Once submitted, Proposals, including the composition of the consulting staff, shall not be changed without prior written consent.
- All requests for clarification for this RFP must be made in writing at least 96-hours prior to the due date as set forth in this RFP. Consultants shall contact Hunter Young at the following email address: [hunter.young@cityofsanrafael.org](mailto:hunter.young@cityofsanrafael.org).
- The City will only respond to questions in writing from Consultants. The deadline for question submittal is 96 hours before proposals are due. 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 the following web address: <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.

### **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 cost proposal shall NOT be submitted with the Proposal.** Following the qualifications-based selection process, the City will request a cost proposal from the top ranked Consultant selected to enter negotiations. When requested, provide the cost proposal in a sealed envelope, or submit via email as directed by the City.

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.

### **Technical Criteria**

Based on the Caltrans Local Assistance Procedures Manual, ranking of the Proposals will be weighted based on the following Technical Criteria point system (100 points maximum):

1. Understanding of the work to be done (20 points)
2. Experience with similar kinds of work (30 points)
3. Quality of staff for work to be done (20 points)
4. Familiarity with state and federal procedures (30 points)

The City will notify each Consultant regarding the outcome of the selection process. The City may reject any or all Proposals if it deems such action is in the public interest.

### **Consultant Nominating and Selection Process**

1. A Consultant Selection Committee will be established for this project. Each member of the Committee will evaluate each submitted Proposal.
2. The Committee will select a shortlist of firms qualified for this project to participate in an oral interview, which may be conducted via video conferencing.
3. Based on qualifications provided in Proposals and oral interviews, the Committee will rank the Consultants. The top-ranked firm will be selected.
4. The Committee, or representative, will enter negotiations with the selected firm. The negotiations will cover the following: Scope of Work, contract terms and conditions and profit. If the Committee is unable to reach an acceptable agreement with the selected firm, the negotiations will be terminated and negotiations with the second-ranked firm will be initiated.



5. After negotiating a proposed agreement that is fair and reasonable, the Public Works Director will recommend to the City Council the approval of the agreement. Final authority to approve the agreement rests with the City Council.

### **Special Conditions**

- **Professional Services Agreement**  
The Consultant selected shall use the City of San Rafael's standard Professional Services Agreement. A copy of the Agreement template is attached to this RFP. **Submitting a Proposal is acceptance of the Professional Services Agreement as-is.** 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/meeting, must receive prior written approval from the City before disclosing such information to the public.

### **Attachments**

#### **For informational purposes only, the following is provided:**

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.

Respectfully,



Hunter Young  
Assistant Public Works Director/City Engineer

**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 "**CONSULTANT**").

**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. **CONSULTANT’S Project Director.** **CONSULTANT** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. \_\_\_\_\_ is hereby designated as the PROJECT DIRECTOR for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONSULTANT** shall notify the **CITY** within ten (10) business days of the substitution.

2. **DUTIES OF CONSULTANT.**

**CONSULTANT** 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 **CONSULTANT**, **CITY** shall pay **CONSULTANT** as follows:

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

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 **CONSULTANT** and any and all of **CONSULTANT'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 **CONSULTANT** 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, **CONSULTANT** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONSULTANT** in connection with its performance of its duties under this Agreement. **CONSULTANT** 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, **CONSULTANT** 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 **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **CITY** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.

4. If it employs any person, **CONSULTANT** 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. **CONSULTANT'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 **CONSULTANT** 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 **CONSULTANT'S** insurance policies shall be "primary and noncontributory" 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 **CONSULTANT'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, **CONSULTANT** hereby grants to **CITY** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **CITY** by virtue of the payment of any loss under such insurance. **CONSULTANT** 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 **CONSULTANT** under this agreement.

**C. Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT'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 **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONSULTANT** 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 **CONSULTANT**. 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., **CONSULTANT** 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 **CONSULTANT'S** performance of its obligations or conduct of its operations under this Agreement. The **CONSULTANT'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 **CONSULTANT'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 **CONSULTANT'S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONSULTANT'S** indemnification obligations. In the event the **City Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONSULTANT'S** performance of or operations under this Agreement, **CONSULTANT** 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 **CONSULTANT** 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, **CONSULTANT** 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 **CONSULTANT**, 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.

**CONSULTANT** 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.

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

TO **CONSULTANT**'s Project Director:

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

16. INDEPENDENT CONTRACTOR.

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

**CONSULTANT** agrees that **CITY** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** 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.

**CONSULTANT** shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code **CONSULTANT** 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 **CONSULTANT** 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 by electronic signature and 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**

**CONSULTANT**

\_\_\_\_\_  
JIM SCHUTZ, City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ROBERT F. EPSTEIN, City Attorney

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_