Request for Proposals

City of San Rafael

Recreation and Child Care
Software System

Table of Contents

1.0   INSTRUCTION TO VENDORS

You are hereby invited to submit a proposal for the products and services identified herein. This section will describe the submittal requirements and the process to be used for evaluation.

1.1   Purpose

The City of San Rafael is looking for a Recreation Management Software System (RMSS) to manage the diverse range of recreation and childcare programs that the City offers. This system will be a gateway used by staff and the public to provide recreation services including:

- Activity Registration (desk and online)
- Facility Reservations (desk and online)
- Child Care Management (optional or could be proposed as a standalone solution)
- Membership Management
- Financial Accounting
- Point of Sale
- Robust Reporting Capabilities
- Payment Processing Compliance

This RFP is specifically intended for software firms with the necessary experience and personnel required to supply and install the software application and provide staff training and ongoing technical support in accordance with the requirements outlined in the Scope of Services of this document.

1.2   Guiding Principles

The City of San Rafael has identified a set of guiding principles that are critical to the success of the software system and that will be used when selecting a vendor. These guiding principles are:

- The City is seeking a solution that is user friendly and intuitive, both for the customers and staff, with accessible and responsive tech support.
- The software must integrate easily with the City's existing and future accounting systems.
- As the City's customers are relying more and more heavily on cell phones to access City services, finding a mobile-friendly solution is a priority.

1.3   General Requirements and Information

For a vendor to be considered, the City must receive a digital copy of the proposal by 5pm on October 5th. Vendors shall also use the form provided in the RFP Response Form Packet and mirror the format described in Section 4. The response should be submitted to the project manager, contact info below.

The City of San Rafael will schedule vendor demonstrations the weeks of November 2nd and November 9th. Vendors will come be expected to make two presentations, one focused on how their solution will address the desired recreation and/or childcare program functionality from an end user and staff perspective, and a second demonstration on the accounting features and integrations. All presentations will be made remotely via video conference due to COVID-19.

There is no express or implied obligation for the City of San Rafael to reimburse responding vendors for any

expenses incurred in preparing proposals in response to this request. The City of San Rafael reserves the right to retain all proposals submitted, and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the vendor of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City of San Rafael and the vendor selected.

1.4   *Vendor inquiries, including demonstration scheduling*

All inquiries will be directed to the Project Manager:

> Catherine Quffa
> City of San Rafael
> catherine.quffa@cityofsanrafael.org

All vendors that plan on participating in the Virtual Vendor Conference should email the Project Manager prior to September 14, to receive information about joining the meeting virtually. Vendors are also encouraged to submit their questions to the Project Manager prior to September 14, to ensure they are adequately addressed during the Virtual Vendor Conference.

No gratuities of any kind will be accepted, including meals, gifts, or trips. Violation of these conditions may constitute immediate disqualification.

1.5   *Timeline*
The anticipated timeline, subject to change, for the complete process is as follows:

RFP Release – Response Window Opens	09/01/2020
Virtual Vendor Conference (10:00AM)	09/16/2020
Final Proposals Due (5:00 PM)	10/05/2020
Vendor Demonstrations Scheduled	11/02/2020-11/13/2020
Vendor Selected	12/15/2020
Contract/Award Finalized and Executed	03/01/2021
Equipment Installation/Configuration	TBD
End User System(s) Training	TBD
End of System Acceptance Test Period	TBD
End of Reliability Testing Period	09/15/2021

2.0   CITY AND RECREATION & CHILD CARE PROFILE

2.1 The City of San Rafael

San Rafael was incorporated in 1874 and became a charter city in 1913. It has a council/city manager form of government with Marin's only elected mayor and four elected city council members who serve four-year terms. San Rafael City Hall is located at 1400 Fifth Avenue.

The City of San Rafael has a population on 58,440 and occupies 22 square miles, 17 of which are land and 5 are water and tidelands. Low coastal mountains typify the terrain with water frontage on San Pablo Bay, the northern extension of San Francisco Bay. More than 45% of the City's land is vacant, open space, parks, or public lands. It is the urban center and County seat for the County of Marin whose population is 242,188. It is the largest incorporated city in Marin. There are 12 Colleges & Universities within commuting distance including Dominican College in San Rafael and the Marin Junior College campuses in Kentfield and Ignacio. San Rafael is located one-half hour north of the Golden Gate Bridge on Highway 101.

Additional information about the City of San Rafael can be found on the official City of San Rafael website (www.cityofsanrafael.org).

2.2 City of San Rafael Recreation & Child Care

2.2.1 Administration
The Recreation and Child Care Division is a part of the City's Library & Recreation Department. The division has an approximately $8 million dollar expenditure budget and produces $6 million in revenue per year. Of the $6 million in revenue, $4 million is generated by the Child Care programs and $2 million by the Recreation programs. Administration section of the Department consists of budgeting, personnel management, communications, technology, marketing, customer service delivery, support for program divisions and coordination with other City Departments.

2.2.2 Recreation
The Recreation section is responsible for the operation of three community centers, one cultural center, two aquatic facilities, athletic fields, tennis courts, and park use. The centers offer programs, activities, events, and classes to the public. Participation fees for cost recovery are charged for most, but not all offerings. Programs include session-based as well as drop-in classes. Most enrollment/participation registration occurs online. Memberships and per visit transactions are also applicable to the Facilities section.

Facilities are also rented to private and public groups for events, celebrations, and meetings. Rental fees are determined by resident status, type of group and event. Picnic areas, fields, tennis courts, pools and parks are rented for sports leagues, public programs, private use and special events. Facility reservations are processed by telephone or in person at the community centers.

Facilities report out, collectively and separately the enrollment/participation totals, rental and

reservation totals, revenue collected and fees waived. Revenue is accepted by cash, check, and credit card with the majority falling in the latter category.

2.2.3 Child Care
The Child Care section includes After-School Programs, Preschool, Youth Enrichment Classes, and Summer Camps.

The After-School Program includes seven school age Children's Centers. Five of the Children's Centers are located on school campuses and one is located on City-owned property. Fees are charged for days attended on a monthly basis. Some scholarship revenue is received to support the Program. School Age programs operate from 1:30pm to 6:30 p.m. during the school week and 7:30a.m.- 6:30 p.m. during school vacation periods.

The City manages two Preschool programs, both are located on City-owned properties. Preschools operate full and half days, one year-round the other during the academic year. Families at one preschool are charged a flat, monthly rate while the other program is grant funded.

There are over 700 families participating in the After-School and Preschool Programs. Each location is licensed by the State of California that requires a high level of compliance reporting. Enrollment varies from 30 families to 119 families served on each site. Administration of the program calls for registration, student data collection, invoicing, accounts receivable, and staff scheduling functions.

The Youth Enrichment Program produces classes for students age 5-14 on seven school campuses. Approximately 135 Enrichment classes are held per academic semester, serving 1,500 students. The classes are fee based. Instructors are independent contractors with the City of San Rafael and are compensated with a percentage of revenue generated for their classes.

The City's Summer Camps offer children ages 2-15 years weeklong full and half day activities on school campuses, parks and Community Centers. Staff is comprised of Seasonal Part-Time employees and Independent Contractors, compensated by hourly wage or percentage of course revenue.

3.0   SCOPE OF SERVICES

The project objective is to obtain an RMSS that meets the current and future needs of the City of San Rafael Recreation and Child Care Division. The City prefers to purchase an existing RMSS that is commercially available and requires minimal customization to meet the City's needs, is in use by other similar agencies in other jurisdictions of a similar size and complexity, and proven to operate effectively over time. Vendor should demonstrate long-term viability as a company and long-term commitment to customers through regular product enhancements and on-going support.

The ideal software solution will enable the City to provide excellent customer service both in person and online for its main business activities including, but not limited to, daily recreation program administration and registration, facility and field reservations, memberships, payment processing and reporting. In addition, the system should provide for efficient and effective business processes and management tools to assist in program administration. Overall ease of use, including robust data management and reporting capabilities, is critical.

The City is interested in RMSS that can support both the Recreation and Child Care programs but is also willing to consider systems that specialize in one or the other.

3.1 System-Wide Functionality

3.1.1 Accounting
Ability to maintain client accounts, general ledger accounts, payment types, and different tax rates. Ability to search credit card transactions and apply third party billing. Ability to split revenue into multiple accounts on one program, membership, facility, and point of sale item. Ability to seamlessly track and process client refunds.

3.1.2 Reporting
Ability to retrieve all fields used in all areas of database for reporting purposes. Ability to produce accurate, easy to create and read reports.

Ability to obtain all information about clients, events, programs, or facilities such as detailed revenues (i.e. adult membership, type, etc.) and any other distinguishing notes pertaining to the event or program.

3.1.3 Financial Integration with Eden and other financial systems
Ability to interface or at least export to the City's current financial system, Eden Financials by Tyler Technologies. Critical functionality includes a general ledger data export and an export process to refund checks in the Eden system. The City will be transitioning to another system and is interested in the ease and flexibility of interfacing with other financial systems as well.

3.1.4 Integration with other City computer systems
The City desires functionality that will integrate with other City computer systems, such as the geographic information system (GIS) for reporting and statistical analysis, the content management

system (CMS) for storage and retrieval of electronic documents, the electronic notification (eNotify) system for distribution of newsletters and other regular correspondence, and a yet-to-be-selected customer relationship management (CRM) system for tracking interactions with citizens and other members of the public.

3.1.5 Payment Processing Compliance

The City wants to take payments for its classes, programs and facility rentals using a variety of methods include cash, check, credit, and debit cards and ACH, if available. The City is concerned about PCI compliance and is looking for a product that keeps credit card information separate from the City's network, minimizes, or eliminates DMZ hosting requirements, and overall makes PCI compliance less costly for the City. At the same time, the Department is interested in transaction details from credit card and other payment processes automatically linking to a customer transaction that is stored in the main database.

3.2 Function Specific

3.2.1 Account Management

The City requires a core customer database that allows patron management across the various components of the system. Strong areas of interest include a flexible search capability within the customer database and standard fields for capturing key customer information; ability to maintain distinct accounts avoiding multiple customer accounts assigned to the same patron; ability to merge data reports.

3.2.2 Online Sales

Allow customers to register for courses, programs and activities, reserve facilities, purchase memberships, purchase tickets, submit required forms and pay bills online in one transaction. Allow customers to schedule payments, maintain their account and retrieve receipts and schedules.

3.2.3 Facility Reservations (Online and In-Person)

Ability to make reservations for facilities in person, over the phone, and online. Facilities have distinct use requirements, deposits, fees, and seasonal use structures. Provide access to electronic facility maps.

3.2.4 Program/ Activity/ Course Registration (Online and In-Person)

Allow customers to view availability, capacity, and to register and pay for multiple offerings at a time online and in-house. Allow for discounts to be managed at front desk and on-line. Ability to manage accounts, receivables for offerings that require payment before or during the offering schedule.

3.2.5 Camps

Ability for customers to register, complete and submit required forms, and make payments for camp sessions. Include waitlist management, attendance forms, and gender specific offerings. Allow for easy staff access to emergency contact information. Ability to purge documents in accordance with file retention procedures and applicable laws.

3.2.6 Point of Sale

Provide a secure networked Point of Sale system for high volume customer transactions. Provide for ticket type receipt option. Provide user friendly interface including credit card readers. Provide security features to prevent cashiers from preforming manager functions such as end of shift reporting, refunds, etc. Assign sales to appropriate GL account and provide accurate reporting features to create audit trails and other custom formulas.

3.2.7 Memberships (Online and in Person)
Ability to sell a variety of memberships and multi visit passes with varying term lengths. Ability to scan and validate membership cards with photo identification and program/activity/event/class link. Ability to accommodate multiple rates and discounts.

3.2.8 Catalog/Brochure
The software solution must include the ability for staff to create custom catalog and brochures based on program and activity data. The ideal software will provide an online catalog and brochure builder that facilitates custom page layouts based on program and activity data, and have the ability to style, publish and print activity brochures, export data into Adobe InDesign software, and will be adaptive to the changing needs of the organization and its customers.

3.2.9 Child Care
Ability to register, complete and submit required forms, view schedule availability, make payments, manage account information, acquire tax-oriented data. Allow for easy staff access to emergency contact information. Ability to purge documents in accordance with file retention procedures and applicable laws. The Child Care functionality is optional/could be presented as a standalone solution.

3.3 Technical Specifications

3.3.1   Technical Considerations
The City would prefer a cloud- based vendor-hosted environment. The emphasis should be on providing a turn-key system which will require as little as possible management and support from City technical and operational staff. The ability to easily install/configure client devices for day-to-day system operation, printing, and sending/receiving emails is highly desirable.

3.3.2   Data Transfer
The ability to transfer select data from the current PerfectMind system is highly desirable. At a minimum, the City would like to have access to prior years of financial data in the system.

3.3.3   Mobile-Friendly
The City of San Rafael's customers are relying more and more on mobile devices to access City services. A mobile-first or mobile-friendly solution is critical.

3.3.4   Privacy
Personal private information should remain private and not used without permission, or resold to other entities. Registrants should not be contacted by the vendor or other vendors without explicit permission of the user

3.4 Summary of Preferred Functionality

Customer Service
- Membership Sales
- Ability to upload photos from customer home site
- Customer self-access to accounts
- Course registration
- On-line form completion
- Facility availability/reservation request
- View child's schedule/program/activity
- User friendly web pages displaying event/activity/facility offerings and availability
- Robust user name/password functionality
- Ticket sales/print

Recreation Administration
- Course Registration
- Class Rosters
- Contractor invoice preparation w/ nonresident, material and other fee calculations automatic
- Contractor information and vendor number available for payment processing, instructor contracts
- Custom catalog and brochures based on program and activity data
- Create/view/print calendars
- E blasts, texts
- Facility Reservation
- Registration status updates (signatures/permissions)
- Maintenance scheduling/identification
- Admin booking detail
- Automatic invoicing
- Automatic reminders/rental payments
- Alerts on accounts
- Text alerts/email blasts
- Staff scheduling

Recreation Administration (Cont'd)
- POS
- Participant rolls/ info
- Course codes linked to revenue account
- Reports
  - Daily/Monthly/Annual GL
    - By transaction
    - By payment
  - Rental detail
    - By function/user
    - By facility use type
    - By facility use paid/unpaid
  - Receivables
  - Account Credits
  - Facility user totals

Child Care Administration (optional/standalone)
- Parent sign in/out kiosk
- Client access to account data
- Registration forms
- Student monthly schedule
- Payment automatic reminders
- Invoice/Payment history
- Income tax deduction
- Director Roll Book management
- Email blast communication

Interdepartmental Administration
- Hosted payment server, or utilize 3rd party payment processing service
- Minimal IT conversion requirements
- Optimal communication/coordination with Eden, and other City systems
- Automatic financial reports/reconciliation
- Mobile-first/Mobile-friendly

4.0   REQUEST FOR INFORMATION FORMAT

It is the intent of this RFP to ascertain if and how your system fulfills the functionality outlined in section 3.

In addition to onsite demonstrations, all information should be submitted in the following format to enable the City to fairly evaluate and compare all systems. The Executive Summary and Sections 1.0 through 4.0 should be no more than 10 pages.

Executive Summary

Narrative:
Vendors are asked to outline briefly the entire product offering and any key elements to which readers should pay particular attention.

Section 1.0   Vendor Profile

The vendor profile should include a narrative section that addresses the following:
- An overview outlining the history of the vendor showing its expertise in recreation software management, meeting deadlines, and performing previously agreed upon work.
- A list of all project personnel and their roles. The vendor's dedicated project manager will have direct and continuous responsibility in matters dealing with the project. He or she will handle the day-to-day activities through to completion.
- A list of recent or in-process, relevant projects or similar size, scope, and complexity. This list shall include the names of the organizations, number of staff and patrons/clients using the system and date of completion.

Additionally, Vendors should include the Vendor Profile Form (RF1) as an Excel document labeled RF1. The answers to these questions will help City assess the Vendor's qualifications to deliver the proposed system(s). There are no separate directions for this profile as it is self-explanatory.

Section 2.0   System Specifications

Vendors are free to outline and summarize their proposals in narrative or table format and should include details of how they will meet all of the City's functional specifications. Specific exceptions to City's functional specifications should be described and justified here as well as any additional information the Vendor feels relevant to their offering. Vendor should also describe the technical specifications for operating their proposed system (including server, workstation, and/or network requirements).

Section 3.0   System Integration and Training

Vendors are requested to submit in narrative form, an explanation of the process for research, development, and integration of the system. The City would like to understand what working with this

vendor looks like, what their process will be to learn about the City's business needs, how the vendor will build out a version of the product tailored to meet the City's needs.

Vendors should also include information on the training services offered as well as project schedule indicating timelines for deliverables, critical meetings, etc. Please include information regarding the training format, and types of training as well as a full description of major tasks and subtasks that will be required to meet the system requirements and project schedule.

Section 4.0   Roadmap

Vendors are asked to include a narrative about their roadmap for the future and what is on the horizon in terms of new product features and enhancements.

Section 5.0   Full Cost

The full cost associated with the proposal including software, hardware, installation, implementation, training, processing fees, software updates, ongoing maintenance, and service calls. Include a cost breakdown of major components or milestones and estimates of all other expenses and/or one time fees that will be invoiced to the City. Proposals shall include any projected recurring costs for five years or more.

Section 6.0   Sample Contract Documents

Sample and Narrative:
Vendors are encouraged to use the City's boilerplate services agreement as a starting point for a written contract (to be negotiated later). See Appendix B. Vendor should submit first-look comments on whether the City's standard language will need amendment or (alternately) submit sample contracts for maintenance or support of all proposed items as required herein for City review. City desires a single source for all on-going support. If there are multiple vendors involved, either through joint proposals or sub-contractor provisions, there must be a provision for one vendor to be the primary source for all support such that cooperating vendors can be dispatched by the primary maintenance/support provider.

Section 7.0   Appendices

Additional Vendor system brochures

Sample hardware and/or network system specifications

Sample Vendor contracts and/or comments on City's boilerplate language

Sample Vendor Installation Diagrams

Sample Vendor Implementation Timeline/ Project Plan

Appendix A: Vendor Profile RFI

Question	Answer
Company	
Company address	
Company web page	
Main products/services	
Main market/customers	
Number of years on the market	
Employees	
Production	
R&D	
Marketing and sales	
Quality department	
Financial information	
Last year turnover	
Last year gross margin	
Last year profit	
Stock markets where your company is listed	
Service Offering:	
Admin Training Schedule and Agenda	
User Training Schedule and Agenda	
Implementation Plans/Timeframes	
Service Level Expectations:	
Maintenance and Support Details	
System Build – how is the software accessed	
(Hosted/Web/Onsite)	
Include sample engineering diagram	
Contact person and responsible for answering this RFI	
Telephone	
Email	
Conditions that's listed in the RFP and can't be met	

Appendix B: Agreement for Professional Services

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:

        _____
        _____
        _____

4.   COMPENSATION.

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

_____

_____

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.

[16]

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**

_____   By:_____
JIM SCHUTZ, City Manager
                                                         Name:_____

                                                         Title:_____

ATTEST:

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

_____
LINDSAY LARA, City Clerk
                                          By:_____
APPROVED AS TO FORM: Name:_____

                                              Title:_____

_____
ROBERT F. EPSTEIN, City Attorney