



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Police

Prepared by: Todd Berringer,
Police Lieutenant

City Manager Approval: _____

A handwritten signature in blue ink, appearing to be the initials 'AS', written over a horizontal line.

TOPIC: SECURITY SERVICES FOR THE SERVICE SUPPORT AREA

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND CONTINUE AS NEEDED A MONTH-TO-MONTH PROFESSIONAL SERVICES AGREEMENT WITH BARBIER SECURITY GROUP TO PROVIDE SECURITY SERVICES AT THE SERVICE SUPPORT AREA, IN AN AMOUNT NOT TO EXCEED \$31,770 MONTHLY

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute and continue as needed a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area in an amount not to exceed \$31,770 monthly.

BACKGROUND:

In mid-2020, in response to the COVID-19 pandemic, the California Department of Transportation (Caltrans) issued interim guidance restricting the removal of encampments on state property. In the fall of 2020, the City began meeting with representatives from Caltrans and representatives from Marin County due to the concern about the pandemic and expanding encampments in the Caltrans right-of-way under the Central San Rafael viaduct. With the assistance of Senator McGuire, City staff began to collaborate with the County of Marin and the State to engage in an effort to mitigate the growing public health and safety issues associated with these encampments. An analysis of January through March of 2021, compared to the same time period a year prior, revealed a nearly 100% increase in the rate of police and fire calls for service to the area.

City staff collaborated with the County of Marin and the State to establish a temporary Service Support Area (SSA) between Fifth and Mission Avenues in June 2021. The SSA provides a safe, alternative location for individuals who are experiencing homelessness where service social service providers can meet with clients in a centralized area. This has been an effective approach toward getting individuals the services, and ultimately the housing need, in a safe environment. All of the property under the freeway is owned and controlled by Caltrans and Caltrans has been supportive of the City, County, and service providers offering wrap around services at the SSA location.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

ANALYSIS:

When the SSA first opened, the City entered into a short-term contract with Barbier Security Group for security services staff thought would be needed to control access to the site. This agreement called for staffing of the site by one uniformed security agent at the SSA, 24 hours per day, seven days per week at a rate of \$42.50 per hour, and additionally included City reimbursement of the company's costs to maintain a portable command center on the site. Barbier Security Group provides a necessary service to the SSA to ensure the safety of the individuals residing at the SSA and the community and to restrict access to the site by unauthorized persons. Additionally, Barbier Security Group maintains the peace and directs service providers to the location of the individuals seeking assistance. There are currently 49 individuals experiencing homelessness currently residing at the SSA.

The services of Barbier Security Group have been reviewed and vetted by City staff and found to be of high quality, and the company to be both responsive and responsible. Staff recommends that the City continue to contract with Barbier Security Group for the secure operation of the SSA. The attached resolution would authorize the City Manager to execute a new month-to-month agreement with Barbier Security Group to provide one uniformed security agent at the SSA, 24 hours per day, 7 days per week at a rate of \$42.50 per hour. The proposed new agreement eliminates the requirement for Barbier Security Group to provide a portable command center but includes City reimbursement in the amount of \$150 per month for their cost to rent a portable toilet for use by security personnel. The resolution would also authorize the City Manager to continue the agreement until he determines that it is no longer needed, at which point it may be terminated on 30 days' notice.

FISCAL IMPACT:

The proposed contract for security at the Service Support Area is month-to-month and can be cancelled at any time with 30 days' notice. The cost of security services provided to the SSA will not exceed \$31,770 monthly and staff recommends funds from the American Recovery Plan Act (ARPA) be allocated towards this contract.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as proposed, approving the agreement with Barbier Security Group.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt a resolution authorizing the City Manager to execute and to continue as necessary a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area in an amount not to exceed \$31,770 monthly.

ATTACHMENTS:

1. Resolution
2. Professional Services Agreement with Barbier Security Group

RESOLUTION NO.

RESOLUTION OF THE SAN RAFAEL CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AND CONTINUE AS NEEDED A MONTH-TO-MONTH PROFESSIONAL SERVICES AGREEMENT WITH BARBIER SECURITY GROUP TO PROVIDE SECURITY SERVICES AT THE SERVICE SUPPORT AREA, IN AN AMOUNT NOT TO EXCEED \$31,770 MONTHLY

WHEREAS, in coordination with the State of California, the County of Marin, and local service providers, the City of San Rafael has established a temporary Service Support Area on Caltrans property under the Central San Rafael viaduct between Fifth and Mission Avenues, to assist persons experiencing homelessness in San Rafael in obtaining permanent housing; and

WHEREAS, the City requires security services for the Service Support Area; and

WHEREAS, these security services are necessary to the City and to the community to ensure the safety of community members who are using the Service Support Area; and

WHEREAS, Barbier Security Group has provided the City with similar security services in other parts of the City since 2014 and the City has found their services to be of high quality, and the company to be both responsive and responsible; and

WHEREAS, on June 25, 2021, the City Manager entered into a month-to-month agreement with Barbier Security Group to provide the needed security services at the Service Support Area on a temporary basis, and that agreement has been in effect since July 6, 2021; and

WHEREAS, the City Council desires to continue to employ Barbier Security Group on a month-to-month basis to provide security services at the Service Support Area and the Barbier Security Group is willing and able to continue to provide said services;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes the City Manager to execute a month-to-month agreement with Barbier Security Group to provide security services at the Service Support Area, in an amount not to exceed \$31,770 per month and in the form included with the staff report supporting this resolution; and further authorizes the City Manager to continue that agreement until such time as he determines that professional security services are no longer needed at the Service Support Area.

I, LINDSAY LARA, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Monday, the 13th day of September 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

AGREEMENT FOR PROFESSIONAL SECURITY GUARD SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and BARBIER SECURITY GROUP, a California Corporation (hereinafter "**CONTRACTOR**").

RECITALS

WHEREAS, CITY, with the consent of the California Department of Transportation ("Caltrans"), operates a temporary Service Support Area on and around the Caltrans property under the Highway 101 viaduct between Fifth Avenue and Mission Avenue in San Rafael (the "SSA"); and

WHEREAS, CONTRACTOR is a private patrol operator licensed under the California Private Security Services Act, and operates a business providing guards and patrol personnel to protect persons and property; and

WHEREAS, the CITY has a need for regular professional security guard services in connection with its operation of the SSA; and

WHEREAS, the CONTRACTOR has the expertise required to provide such services and is willing to do so on the terms and conditions set forth in this Agreement;

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** Police Lieutenant Todd Berringer 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**. Evan Barbier 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.**

A. **CONTRACTOR** shall provide the following services to **CITY**:

- **CONTRACTOR** shall furnish fully qualified and trained patrol personnel/uniformed guards ("Guard(s)") to patrol the SSA, as follows:

CONTRACTOR shall provide one Guard 24 hours per day, 7 days per week, who shall carry out duties as set forth below.

- **CONTRACTOR** shall provide an onsite porta-potty for **CONTRACTOR'S** exclusive use.

B. In the event any Guard observes any suspicious criminal activity, bomb threats, evidence of actual or impending theft or damage to property, or evidence of actual or impending harm to persons at or associated with the SSA, the Guard shall immediately notify appropriate local law enforcement agencies, supervisory personnel of **CONTRACTOR**, and the **CITY**.

C. The patrol services provided for by this Agreement shall be performed by qualified, efficient, and discreet employees always maintaining a professional demeanor in strict accordance with recognized best industry practices.

D. **CONTRACTOR** shall have available by telephone a live supervisor 24 hours a day, 7 days a week, who can be reached by a Guard on duty and by the **CITY**, at (415) 747-8473.

E. If for any reason **CITY** advises **CONTRACTOR** that **CITY** believes that any employee of **CONTRACTOR** is not properly carrying out his or her duties, **CONTRACTOR** shall promptly remove that employee from the performance of the services to be provided under this agreement and simultaneously substitute another employee.

3. GUARD QUALIFICATIONS AND REQUIREMENTS.

A. Training and Qualifications of Guards. Each Guard who patrols the SSA shall be registered with the California Bureau of Security and Investigative Services, and will, at all times while on duty, carry a valid security guard registration card. In addition, each Guard shall satisfy the following requirements:

i. Each Guard shall have completed a course in the exercise of the power to arrest pursuant to Business & Professions code Section 7583.6.

ii. Each Guard who carries a firearm shall have completed the training course required by Business & Professions Code Section 7583.22 and shall always carry a valid guard registration card and a valid firearm qualification card issued by the Bureau of Security and Investigative Services.

iii. Each Guard who carries a baton shall have obtained a certificate of proficiency from an approved baton training facility pursuant to Business & Professions code section 7583.34.

iv. Each Guard who carries tear gas or other nonlethal chemical agents shall have completed a course of instruction and carry a certificate of proficiency from an approved training facility pursuant to Business & Professions code Section 7583.35.

If **CITY** requests that **CONTRACTOR** sign up or pay for a vendor accreditation, tracking, or monitoring website or service (“Accreditation Service”), **CITY** agrees to reimburse **CONTRACTOR** for all expenses relating to such Accreditation Service, including but not limited to all application fees, set up fees, annual fees, all expenses incurred by bill pay services, services fees, and charges for credit card payments within ten (10) days of receipt of written notice from **CONTRACTOR**.

B. Uniforms and Equipment. While patrolling the SSA, all of **CONTRACTOR’S** Guards shall be completely outfitted with a uniform bearing a patch on each shoulder having the words “Private Security” and the name of **CONTRACTOR**, shall wear a badge bearing the name of **CONTRACTOR**, and shall carry reasonably necessary equipment, including baton, handcuffs, pepper spray, taser and firearm, as mutually agreed in writing between **CITY** and **CONTRACTOR**.

4. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 5, coordinate with **CONTRACTOR** on scheduling of security services in a timely manner, and otherwise cooperate as necessary for the performance of **CONTRACTOR’S** services hereunder.

5. COMPENSATION.

A. For the full performance of the Guard services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** on an hourly basis at the rate of \$42.50 per Guard per hour. Should **CITY** request one or more additional Guards at any time on less than 48 hours’ notice, **CITY** shall pay **CONTRACTOR** compensation on an hourly basis at the rate of \$63.75 per Guard per hour. A four-hour minimum is required for all Guard shifts. The applicable legal overtime rate shall be charged if **CITY** requests that a specific Guard work more than 40 hours in one work week or more than eight hours on any day, and for all services on all Federal and State holidays.

B. In addition, **CITY** shall reimburse **CONTRACTOR** in the amount of \$150 per month for the provision of one porta-potty at the SSA for **CONTRACTOR’S** exclusive use.

C. **CONTRACTOR** may adjust the service pricing by no more than 3% on an annual basis, effective on the first anniversary of the Effective Date, and on each anniversary of the Effective Date during the term of this Agreement.

D. Total payments for services provided pursuant to this agreement shall not exceed \$31,770 per month.

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

6. TERM OF AGREEMENT.

The term of this Agreement shall begin on the Effective Date and will continue in full force

and effect until it is terminated as provided in Section 7 of this Agreement.

7. 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.

8. 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.

9. 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.

10. 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, which shall not be unreasonably withheld, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

11. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, **CONTRACTOR** shall maintain, at no expense to **CITY**, the following insurance policies:

i. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/three million dollars (\$3,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

ii. 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.

iii. 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:

i. 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, to the extent of **CONTRACTOR'S** contractual indemnification obligations, for both ongoing and completed operations, under the policies.

ii. The additional insured coverage under **CONTRACTOR'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 **CONTRACTOR'S** policies shall be at least as broad as ISO form CG20 01 04 13.

iii. 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.

iv. 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.

v. 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.

vi. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

vii. 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.

viii. 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.

12. INDEMNIFICATION.

A. **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** breach of its obligations under this Agreement, and/or its negligence or willful misconduct. To the extent that liability is caused by the 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 its negligence or willful misconduct. 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. 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.

C. Notwithstanding the foregoing, except with respect to fraud or willful misconduct by **CONTRACTOR**, **CONTRACTOR'S** indemnity obligations pursuant to this Agreement shall not exceed the amount of its applicable insurance coverage.

13. 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.

14. 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.

15. 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.

16. 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:

Lt. Todd Berringer
San Rafael Police Department
1375 Fifth Avenue
San Rafael, CA 94901

TO **CONTRACTOR**'s Project Director: Evan Barbier
Barbier Security Group
369-B Third Street #440
San Rafael, CA 94901

17. 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**. In providing services under this Agreement, all of **CONTRACTOR'S** Guards shall at all times be subject to the direct supervision and control of **CONTRACTOR**, and **CONTRACTOR** will have sole responsibility for paying their salaries, taxes (including, but not limited to, federal and social security taxes and federal and state unemployment taxes) and all other expenses relating to each of them.

18. HIRING CONTRACTOR'S GUARDS.

To the fullest extent allowed by law, **CITY** agrees that it shall not, either during the Term of this Agreement or for a period of one year following termination of this Agreement (the "Non-Solicitation Period"), solicit or hire for its own employment any of **CONTRACTOR'S** employees/Guards who perform services at any time in carrying out the terms of this Agreement. Without limiting **CONTRACTOR'S** other rights and remedies under this Agreement, including without limitation the right to seek recovery damages for a breach of this Agreement, if **CITY** solicits or hires an employee of **CONTRACTOR** contrary to this Agreement during the Non-Solicitation Period, **CITY** shall be obligated to pay **CONTRACTOR** a finder's fee equal to fifty percent (50%) of each such employee's first year's total compensation with **CITY** (prior to any withholdings or deductions), due and payable within 30 days of **CONTRACTOR'S** written request for such payment or commencement of the employee's employment with **CITY**, whichever is earlier.

19. EXCUSABLE DELAYS AND FAILURES.

Neither party shall be liable for any delay or failure in its performance under this Agreement (except for payment obligations) caused by events beyond the reasonable control of the party, including but not limited to, terrorism, war, riots, labor strikes, interruption of utility services, fire, floods, earthquakes, and other natural disasters.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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).

25. 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.

26. APPLICABLE LAW.

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

27. 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

CONTRACTOR

JIM SCHUTZ, City Manager

By: H. Evan Barbier

Name: H. Evan Barbier

ATTEST:

Title: CEO and Founder

LINDSAY LARA, City Clerk

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

By: Carla Barbier

APPROVED AS TO FORM:

Name: Carla Barbier

Title: Treasurer & Co-Founder

ROBERT F. EPSTEIN, City Attorney