



**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

Department: City Manager's Office

Prepared by: Nadine Atieh Hade  
Administrative Services Director

City Manager Approval: \_\_\_\_\_

**TOPIC: HOMELESSNESS PROGRAM CONSULTING SERVICES**

**SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH MARC SABIN FOR CONSULTING SERVICES FOR SAN RAFAEL HOMELESSNESS PROGRAMS**

**RECOMMENDATION:**

Adopt the resolution approving and authorizing the City Manager to execute an Agreement for Professional Services with Marc Sabin for consulting services for San Rafael homelessness programs.

**BACKGROUND:**

Like many cities in California and across the country, San Rafael is seeking to support a growing homeless community and recognizes the need for more homeless support services. While many of these types of programs and services typically fall under the scope of Marin County, the City of San Rafael is actively expanding homeless programs and services to best serve our most vulnerable residents. To ensure their success, these programs require professional leadership and program management.

**ANALYSIS:**

The consultant, Marc Sabin, has served the City of San Rafael as a fixed-term employee for the past five months overseeing these programs and services, but gave notice to terminate his employment to be able to pursue certain other professional opportunities and his desire to control his hours worked and facilitate a distributed work environment. Marc initially gave notice on March 28 and would like to terminate his employment as of May 15. Should the City Council approve this recommendation, the professional services agreement would begin March 17. He has extensive experience in this area and will have the capacity to devote part of his time to work for the City on a consulting basis. This agreement would support the development of robust and effective programs to combat homelessness in San Rafael.

**FISCAL IMPACT:**

The proposed Professional Services Agreement totals a not-to-exceed amount of \$24,375 monthly, which would be the maximum amount if full time services are requested by the City of San Rafael in any given

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**FOR CITY CLERK ONLY**

**Council Meeting:**

**Disposition:**

month. The actual monthly amount will be based on hours worked and will typically fall between half time and full time. The Agreement will be for consulting services, project management, and support for City homelessness programs as directed by, and until terminated by, the City Manager. The funds needed to cover the cost of this service will be provided from the General Fund and through grant funding when available. The funds are available in the fiscal year 2021-22 budget and will be included as part of the budget process for fiscal year 2022-23.

**OPTIONS:**

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

1. Adopt the resolution as presented approving the Professional Services Agreement;
2. Adopt resolution with modifications to the Professional Services Agreement;
3. Direct staff to return with more information; or
4. Take no action.

**RECOMMENDED ACTION:**

Adopt the resolution authorizing the City Manager to execute a Professional Services Agreement with Marc Sabin for consulting services on City of San Rafael homelessness programs.

**ATTACHMENTS:**

1. Resolution
2. Draft Professional Services Agreement

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH MARC SABIN FOR CONSULTING SERVICES FOR SAN RAFAEL HOMELESSNESS PROGRAMS**

**WHEREAS**, the City has a need for professional analyst services to oversee various City projects, including projects related to persons experiencing homelessness in the community; and

**WHEREAS**, Marc Sabin has been a fixed-term employee for CITY for the past five months, and will terminate his employment on May 15; and

**WHEREAS**, Marc Sabin has the necessary education, skills, and professional experience to provide the necessary services; and

**WHEREAS**, the City has requested that Marc Sabin continue to provide needed services as requested by the City in a consulting capacity and Marc Sabin is willing to do so.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of San Rafael hereby approves and authorizes the City Manager to execute a Professional Services Agreement for consulting services for homelessness programs in an amount not to exceed \$24,375 per month, in the form included with the Agenda Report for this Resolution, subject to final approval as to form by the City Attorney.

**I, Lindsay Lara**, Clerk of the City of San Rafael, hereby certify foregoing resolution was duly and regularly introduced and adopted at a regular meeting on the City Council of said City held on Monday, the 2<sup>nd</sup> day of May 2022, by the following vote to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into this \_\_\_\_ day of April, 2022, by and between the CITY OF SAN RAFAEL (hereinafter "CITY"), and MARC SABIN (hereinafter "CONSULTANT").

### **RECITALS**

**WHEREAS**, the CITY has a need for professional analyst services to oversee various CITY projects, including projects related to persons experiencing homelessness in the community; and

**WHEREAS**, CONSULTANT has been a fixed-term employee for CITY for the past five months, and gave notice to terminate his employment as of May 15; and

**WHEREAS**, CONSULTANT has the necessary education, skills, and professional experience to provide the necessary services; and

**WHEREAS**, CITY has requested that CONSULTANT continue to provide needed services as requested by CITY and CONSULTANT is willing to do so; and

**WHEREAS**, CONSULTANT has not participated in the making of this Agreement in his official capacity as an employee of the CITY, only in his personal capacity;

### **AGREEMENT**

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY'S Project Manager.** The City Manager 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. Marc Sabin 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 and supervise projects related to homelessness, as specifically requested by the City Manager. CONSULTANT shall not have a regular workspace at CITY'S offices and must provide his own workspace, equipment and materials.

3. DUTIES OF CITY.

**CITY** shall pay the compensation as provided in Paragraph 4, and provide **CONSULTANT** with access to such **CITY** resources as may be necessary to perform **CONSULTANT'S** services under this Agreement.

4. COMPENSATION.

For the full performance of the services described herein by **CONSULTANT**, **CITY** shall pay **CONSULTANT** at the rate of \$150 per hour, plus reimbursement of all direct project expenses, including but not limited to transportation, postage, messengers, photographs, and photocopying, provided that in no event shall the compensation payable under this Agreement exceed \$24,375 per month.

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 commence upon execution of this Agreement on May 17, 2022, and can be terminated as provided in Paragraph 6.

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all **CITY** documents or materials provided to **CONTRACTOR** and any and all of **CONTRACTOR'S** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **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 non contributory" with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **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. 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 <b>CITY</b> 's Project Manager:	Jim Schutz, City Manager City of San Rafael 1400 Fifth Avenue San Rafael, CA 94901
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TO <b>CONSULTANT</b> 's Project Director:	Marc Sabin 608 Hampshire Street San Francisco, CA 94110
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16. INDEPENDENT CONSULTANT.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents and employees shall act in the capacity of an Independent Consultant, 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 Consultant 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 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:

[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