



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager's Office

Prepared by: Walter Gonzalez Valdez,
Community Engagement
& Equity Specialist

City Manager Approval: _____

TOPIC: COMMUNITY ENGAGEMENT, EQUITY & HOUSING POLICY CONSULTING SERVICES

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH LIZ DARBY FOR CONSULTING SERVICES

RECOMMENDATION:

Adopt the resolution approving and authorizing the City Manager to execute an Agreement for Professional Services with Liz Darby for consulting services.

BACKGROUND:

The City of San Rafael has been taking a proactive approach to evaluating our policies and procedures and looking for opportunities to remove barriers to housing production. The City is committed to promoting integration, reducing segregation, and increasing housing choices for people living and working in San Rafael. To ensure their success, these programs require professional leadership and program management.

Additionally, the City Council identified racial equity as one of the [four policy focus areas for FY 2021-22](#). The City has identified a need for more expertise to support this key policy area in the coming year, which would specifically be to support the Equity Audit Project. In the City's efforts toward more inclusive resident engagement, the City also has increased its efforts and seeks additional support to co-create and conduct community outreach, in particular in underserved communities, but also with all residents of San Rafael.

ANALYSIS:

The consultant, Liz Darby, has served as a Social Equity Programs and Policies consultant at the County of Marin for the last six years. Liz Darby has extensive experience conducting community outreach and working to ensure that housing options are equitable for residents across various socioeconomic

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

backgrounds. This agreement would support the development of robust and effective programs to address housing and equity issues in the City.

Darby's extensive experience with public housing will be an asset to the City of San Rafael in moving forward with crafting housing policies that address the needs of the City, including supporting staff with the Housing Element, evaluating City policies, procedures, and regulations, and identifying opportunities to remove barriers to housing production as well as identifying barriers that may be reinforcing exclusion in the City and exploring opportunities to transform racially concentrated areas of poverty into areas of opportunity. In addition, Darby will work to strengthen public participation from all economic segments of the community and participate as a key advisor on the City's equity initiatives, including the Equity Audit project. Should the City Council approve this recommendation, the professional service agreement would begin May 17, 2022. Liz Darby has extensive experience in this area and will have the capacity to devote her time to working for the City on a consulting basis.

FISCAL IMPACT:

The proposed Professional Services Agreement totals a not-to-exceed amount of \$21,125 monthly, which would be the maximum amount if full time services are requested by the City of San Rafael in any given month. The actual monthly amount will be based on hours worked. The Agreement will be for consulting services, project management, and support for City housing programs, equity initiatives, and community engagement work 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 Liz Darby for consulting services.

ATTACHMENTS:

- A. Resolution
- B. 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 LIZ DARBY FOR COMMUNITY ENGAGEMENT, EQUITY & HOUSING POLICY CONSULTING SERVICES

WHEREAS, the City Council has identified racial equity as one of the four policy focus areas for FY 2021-22: and

WHEREAS, the City's recently approved 2040 General Plan highlights the City's commitment to diversity initiatives and identifies "racial equity" and "housing stability" as a focus area for City leadership and elected officials in San Rafael; and

WHEREAS, the City has a need for professional analyst services to oversee various City projects, including projects related to public housing, community outreach, and equity; and

WHEREAS, Liz Darby has served as the Social Equity Programs and Policies consultant for the County of Marin for the last six years; and

WHEREAS, Liz Darby has the necessary education, skills, and professional experience to provide the necessary services;

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 community engagement, equity, and housing in an amount not to exceed \$21,125 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 16th 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 May, 2022, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and LIZ DARBY (hereinafter "**CONSULTANT**").

RECITALS

WHEREAS, the **CITY** has a need for professional consulting services to oversee various **CITY** projects, including projects related to diversity, equity and inclusion, community engagement and housing policy and programs; 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.

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**. Liz Darby 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 housing, diversity, equity and inclusion initiatives, and community engagement as specifically requested by the City Manager.

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 \$130 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 \$21,125 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 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 CITY 's Project Manager:	Cristine Alilovich, Assistant City Manager City of San Rafael 1400 Fifth Avenue San Rafael, CA 94901
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TO CONSULTANT 's Project Director:	Liz Darby 115 Martens Blvd San Rafael, CA 94901
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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: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney