

**AGREEMENT FOR \_\_\_\_\_**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and \_\_\_\_\_ (hereinafter "**CONTRACTOR**"). (For example: ABC Corporation, or ABC Enterprises, a general partnership, or JOHN JONES, dba ABC Enterprises.)

**RECITALS**

**WHEREAS,**

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**WHEREAS,**

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**AGREEMENT**

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

1. **DEFINITIONS.**

*(If the nature of the Agreement requires it, specific terms and parties should be defined and the paragraphs renumbered; otherwise, this section should be deleted.)*

2. **PROJECT COORDINATION.**

A. **CITY.** The City Manager shall be the representative of the **CITY** for all purposes under this Agreement. *(This section states the City Manager's authority to represent the City in any and all decisions regarding any issues under the Agreement.)* The *(Police Chief, Fire Chief, City Engineer, Bureau Commander, Finance Director or whomever)* 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.** **CONTRACTOR** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONTRACTOR**. \_\_\_\_\_ 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. *(or, if appropriate, "...the PROJECT DIRECTOR designee shall be subject to the prior written approval of the PROJECT*

MANAGER."). *(This section provides a specific, designated contact person for each party. This should facilitate the smooth administration of the Agreement.)*

3. DUTIES OF CONTRACTOR.

**CONTRACTOR** shall perform the duties and/or provide services as follows: *(or, "...as described in Exhibit "\_\_\_" attached and incorporated herein.")*

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*(In this section, the details of the services to be provided to the City by the Contractor should be specifically enumerated, including the preparation and delivery of any written materials or reports and the timetables for completion of particular services. Additionally, any special qualifications of the Contractor required for performance of the service should be enumerated.)*

4. DUTIES OF CITY.

**CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as follows *(or, "...as described in Exhibit "\_\_\_" attached and incorporated herein.")*:

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*(In this section, the details of the duties of the CITY should be enumerated. Such duties might include providing work space, materials, or other assistance to the CONTRACTOR.)*

5. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **CITY** shall pay **CONTRACTOR** as follows: *(or, "...as described in Exhibit "\_\_\_" attached and incorporated herein.")*

*(In this section, hourly rate, flat fee, hourly-not to exceed, or whatever compensation schedule is agreed upon should be enumerated, together with the phrase "in a total amount not to exceed \$\_\_\_\_\_. The terms of compensation, should also cover any rate increases during the term or extended term of the Agreement.)*

Payment will be made monthly upon receipt by PROJECT MANAGER *(or other CITY official)* of itemized invoices submitted by **CONTRACTOR**.

6. 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 (*or City Council, if appropriate*), the term of this Agreement shall be extended for an additional period of (\_\_\_\_) year(s).

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, 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. During the term of this Agreement, **CONTRACTOR** 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 (\$1,000,000) dollars per occurrence 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 (\$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 (\$1,000,000) dollars to cover any claims arising out of the **CONTRACTOR's** performance of services under this Agreement.

B. The insurance coverage required of the **CONTRACTOR** by section 11. A., shall also meet the following requirements:

1. The insurance shall be primary with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or coverage for any contribution.

2. Except for professional liability insurance, the insurance policies shall be endorsed for contractual liability and personal injury.

3. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additionally named insureds under the policies.

4. **CONTRACTOR** shall provide to City's Risk Manager, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements naming **CITY**, its officers, agents, employees, and volunteers, as additional named insureds under the policies.

5. The insurance policies shall provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance policies except upon ten (10) days written notice to City's Risk Manager.

6. 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.

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

8. The insurance shall be approved as to form and sufficiency by **PROJECT MANAGER** and the City Attorney.

C. If it employs any person, **CONTRACTOR** shall maintain worker's compensation and employer's liability insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both **CONTRACTOR** and **CITY** against all liability for injuries to **CONTRACTOR's** officers and employees.

D. Any deductibles or self-insured retentions in **CONTRACTOR's** insurance policies must be declared to and approved by the City's Risk Manager and the City Attorney. 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.

12. INDEMNIFICATION.

A. Except as provided in Paragraph B., **CONTRACTOR** shall indemnify, release, defend and hold harmless **CITY**, its officers, and employees, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of **CONTRACTOR** or **CONTRACTOR's** officers, agents and employees in the performance of their duties and obligations under this Agreement.

B. Where the services to be provided by **CONTRACTOR** 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, **CONTRACTOR** shall, to the fullest extent permitted by law, indemnify, release, defend and hold harmless **CITY**, its officers, and employees, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees, that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement.

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:**

\_\_\_\_\_  
Project Manager  
City of San Rafael  
1400 Fifth Ave. (P.O. Box 151560)  
San Rafael, CA 94915-1560

**TO CONTRACTOR:**

\_\_\_\_\_  
(Project Director)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 (*or CONTRACTOR is exempt for the business license requirement of the San Rafael Municipal Code because \_\_\_\_\_*). **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).

23. APPLICABLE LAW.

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day, month and year first above written.

**CITY OF SAN RAFAEL**

**CONTRACTOR**

\_\_\_\_\_  
NANCY MACKLE, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
ESTHER C. BEIRNE, City Clerk

APPROVED AS TO FORM:

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