
SAN RAFAEL CITY COUNCIL AGENDA REPORT
Department: CITY MANAGER
Prepared by: Rebecca Woodbury, Management Analyst
City Manager Approval: *M. Mochle*

SUBJECT: Resolution authorizing the City Manager to execute a Professional Services Agreement in an amount not to exceed \$75,600 with Emanuels Jones & Associates for legislative advocacy services.

RECOMMENDATION: Adopt Resolution authorizing the City Manager to execute an agreement with Emanuels Jones & Associates for legislative advocacy services.

BACKGROUND: The 11 Cities and Towns in Marin have contracted for legislative advocacy services since 1998 with Emanuels Jones & Associates. The cost of the contract is split among the jurisdictions based on a formula that equally weights population and assessed valuation. The City of San Rafael has served, and will continue to serve, as the fiscal agent on behalf of the other cities and towns of Marin.

ANALYSIS: Emanuels Jones reviews all legislative bills for their impact on Marin and takes action of specific proposals. This work includes advocating for the protection of local revenues during the state's budget process, preserving local control on housing and other issues, and advancing other legislative issues of interest to Marin. The advocate coordinates visits to the Capitol to meet with and talk to state legislators and other state officials.

The cost for the contract with Emanuels Jones & Associates will cost \$37,500 for the 2015 calendar year and \$38,100 for 2016. In total, the two year contract will be \$75,600.

FISCAL IMPACT: As in previous years, the cost of the contract will be apportioned among the cities and towns within Marin County based upon both assessed valuation and population; attached is a copy of the apportionment schedule for each of the cities and towns in Marin (Attachment A). San Rafael's share is \$10,415 for 2015. Funds have been appropriated in the General Fund for this contract.

OPTIONS: The City Council may choose to:

1. Adopt the Resolution approving the contract with Emanuels Jones as presented
2. Alter the terms of the contract
3. Refuse to adopt the Resolution

ACTION REQUIRED: Adopt Resolution

ATTACHMENTS:

- A. Resolution
- B. 2015 Apportionment of Costs
- C. Professional Services Agreement

FOR CITY CLERK ONLY
File No.: _____

Council Meeting: _____

Disposition: _____

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES
AGREEMENT IN AN AMOUNT NOT TO EXCEED \$75,600 WITH EMANUELS JONES &
ASSOCIATES FOR LEGISLATIVE ADVOCACY SERVICES**

WHEREAS, the Cities and Towns of Marin County ("CTMC") jointly desire to hire a lobbyist to provide legislative advocacy services before the State legislature on their behalf; and

WHEREAS, Emanuels Jones & Associates has the training and experience to provide, and is willing to provide, legislative advocacy services on behalf of the CTMC; and

WHEREAS, the City of San Rafael has agreed to be the lead agency for the CTMC for the purpose of entering into an agreement with Emanuels Jones & Associates to provide such legislative advocacy services on their behalf; and

WHEREAS, the CTMC have agreed to share the cost of the required services;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby approves and authorizes the City Manager to execute a Professional Services Agreement with Emanuels Jones & Associates for legislative advocacy services in the form attached hereto as Exhibit 1 and incorporated herein by reference, in an amount not to exceed \$75,600.

I, ESTHER C. BEIRNE, 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 said City held on Monday, the 5th day of January, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

ESTHER C. BEIRNE, City Clerk

ATTACHMENT B

MCCMC LOBBYIST
2015 Apportionment of Costs

Agency	2014 Pop.*	Prorata Share	2012-13 Assessed Valuation**	Prorata Share	Totals
		50%		50%	
Belvedere	2,094	\$209	\$1,600,951,000	\$733	\$942
Corte Madera	9,381	\$935	2,409,478,000	\$1,104	\$2,038
Fairfax	7,541	\$752	1,085,024,000	\$497	\$1,248
Larkspur	12,102	\$1,206	2,896,705,000	\$1,327	\$2,533
Mill Valley	14,257	\$1,421	4,101,046,000	\$1,878	\$3,299
Novato	52,967	\$5,278	8,289,125,000	\$3,797	\$9,075
Ross	2,461	\$245	1,453,508,000	\$666	\$911
San Anselmo	12,514	\$1,247	2,449,778,000	\$1,122	\$2,369
San Rafael	58,566	\$5,836	9,995,522,000	\$4,578	\$10,415
Sausalito	7,175	\$715	2,661,331,000	\$1,219	\$1,934
Tiburon	9,090	\$906	3,993,735,000	\$1,829	\$2,735
TOTALS	188,148	\$18,750	\$40,936,203,000	\$18,750	\$37,500

*Per State Dept. of Finance

**SBOE Table 11, 2012-13 AV of County Assessed Property

**AGREEMENT FOR PROFESSIONAL SERVICES
FOR LEGISLATIVE ADVOCACY SERVICES**

This Agreement is made and entered into this 1st day of January, 2015, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and DAVID JONES, D.B.A. EMANUELS JONES & ASSOCIATES (hereinafter "**CONTRACTOR**").

RECITALS

WHEREAS, the Cities and Towns of Marin County ("CTMC") desire to retain **CONTRACTOR** to provide legislative advocacy activities and actions before the State legislature on their behalf; and

WHEREAS, **CONTRACTOR** has the training and experience to provide, and is willing to provide, legislative advocacy activities and actions on behalf of the CTMC; and

WHEREAS, **CITY** has agreed to be the lead agency for the CTMC for the purpose of entering into an agreement with **CONTRACTOR** to provide such legislative advocacy activities and actions on their behalf

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. **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**. David Jones 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.**

CONTRACTOR shall perform the duties and/or provide services as follows:

A. Provide consulting services as a lobbyist on pertinent municipal matters on behalf of the Cities and Towns of Marin County, through the Legislative Committee of the Marin County Council of Mayors and Councilmembers ("MCCMC").

- B. Report **CONTRACTOR's** lobbying activities as required by the California Fair Political Practices Act and Commission ("FPPC"), including preparation of form 635 and other required forms.
- C. Certify that employees and/or entities are properly registered, licensed or certified pursuant to law to perform the tasks described herein.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4.

4. COMPENSATION.

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

- A. For the 2015 calendar year, not to exceed \$3,125 per month billed monthly in advance, for **CONTRACTOR's** performance of this Agreement.
- B. For the 2016 calendar year, not to exceed \$3,175 per month billed monthly in advance, for **CONTRACTOR's** performance of this Agreement.
- C. Reimbursement of **CONTRACTOR's** direct costs for travel and FPPC filing fees, not to exceed \$400 for the term of the Agreement.

CONTRACTOR understands and agrees that it shall not incur any additional expenses on behalf of **CITY**, the Cities and Towns of Marin County or the MCCMC, and that **CITY**, the MCCMC and the Cities and Towns of Marin shall not be responsible for any obligations of an employer. Specifically, **CONTRACTOR** shall furnish his own means of transportation (when not required by **CITY** to travel), miscellaneous supplies and incidental expenses. Total compensation paid for services and expenses under this Agreement shall not exceed \$37,500 for 2015. The 2016 contract amount shall not exceed \$38,100.

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

5. TERM OF AGREEMENT.

The term of this Agreement shall be for (2) year(s) commencing on January 1, 2015 and ending on December 31, 2016.

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 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.

8. 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.

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, 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 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 two million dollars (\$2,000,000) per occurrence/four million dollars (\$4,000,000) aggregate, to

cover any claims arising out of the **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.

4. 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. **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:

1. 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.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be primary 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.

3. Except for professional liability insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. The insurance policies shall be specifically endorsed to 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 the **PROJECT MANAGER**.

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.

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.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **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** performance of its obligations or conduct of its operations under this Agreement. The **CONTRACTOR'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 **CONTRACTOR'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 **CONTRACTOR's** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONTRACTOR's** indemnification obligations. 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. 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 the **City Indemnitees** from and against any **CLAIMS** that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such **CLAIM** which is caused by the sole negligence or willful misconduct of **CITY**.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

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.

13. 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.

14. 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.

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:

Nancy Mackle
City of San Rafael
1400 Fifth Avenue
P.O. Box 151560
San Rafael, CA 94915-1560

TO **CONTRACTOR**'s Project Director:

Mr. David Jones
dba Emanuels Jones & Associates
1400 K Street, Suite 306
Sacramento, CA 95814
(916) 444-6789

16. 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**.

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 **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.

18. 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.

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.

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).

22. APPLICABLE LAW.

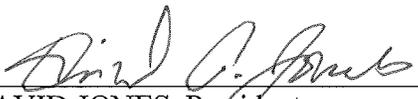
The laws of the State of California shall govern this Agreement.

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

CITY OF SAN RAFAEL

CONTRACTOR
EMANUELS JONES & ASSOCIATES

NANCY MACKLE, City Manager



DAVID JONES, President

ATTEST:

ESTHER C. BEIRNE, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

**AGREEMENT FOR PROFESSIONAL SERVICES
FOR LEGISLATIVE ADVOCACY SERVICES**

This Agreement is made and entered into this 1st day of January, 2015, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and DAVID JONES, D.B.A. EMANUELS JONES & ASSOCIATES (hereinafter "**CONTRACTOR**").

RECITALS

WHEREAS, the Cities and Towns of Marin County ("CTMC") desire to retain **CONTRACTOR** to provide legislative advocacy activities and actions before the State legislature on their behalf; and

WHEREAS, **CONTRACTOR** has the training and experience to provide, and is willing to provide, legislative advocacy activities and actions on behalf of the CTMC; and

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3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4.

4. COMPENSATION.

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- A. For the 2015 calendar year, not to exceed \$3,125 per month billed monthly in advance, for **CONTRACTOR's** performance of this Agreement.
- B. For the 2016 calendar year, not to exceed \$3,175 per month billed monthly in advance, for **CONTRACTOR's** performance of this Agreement.
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5. TERM OF AGREEMENT.

The term of this Agreement shall be for (2) year(s) commencing on January 1, 2015 and ending on December 31, 2016.

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.

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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.

8. 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.

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, 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 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 two million dollars (\$2,000,000) per occurrence/four million dollars (\$4,000,000) aggregate, to

cover any claims arising out of the **CONTRACTOR's** performance of services under this Agreement. Where **CONTRACTOR** is a professional not required to have a professional license, **CITY** reserves the right to require **CONTRACTOR** to provide professional liability insurance pursuant to this section.

4. 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. **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:

1. 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.

2. The additional insured coverage under **CONTRACTOR'S** insurance policies shall be primary 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.

3. Except for professional liability insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. The insurance policies shall be specifically endorsed to 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 the **PROJECT MANAGER**.

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.

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.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **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** performance of its obligations or conduct of its operations under this Agreement. The **CONTRACTOR'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 **CONTRACTOR'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 **CONTRACTOR'S** work or work product by the **CITY** or any of its directors, officers or employees shall not relieve or reduce the **CONTRACTOR'S** indemnification obligations. 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. 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 the **City Indemnitees** from and against any **CLAIMS** that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of **CONTRACTOR** in the performance of its duties and obligations under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such **CLAIM** which is caused by the sole negligence or willful misconduct of **CITY**.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NONDISCRIMINATION.

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.

13. 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.

14. 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.

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:

Nancy Mackle
City of San Rafael
1400 Fifth Avenue
P.O. Box 151560
San Rafael, CA 94915-1560

TO CONTRACTOR's Project Director:

Mr. David Jones
dba Emanuels Jones & Associates
1400 K Street, Suite 306
Sacramento, CA 95814
(916) 444-6789

16. 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**.

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 **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.

18. 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.

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.

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).

22. 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

NANCY MACKLE, City Manager

CONTRACTOR
EMANUELS JONES & ASSOCIATES



DAVID JONES, President

ATTEST:

ESTHER C. BEIRNE, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney