TOPIC: Project and construction management services for public safety facilities in San Rafael

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KITCHELL CEM INC. FOR PROJECT AND CONSTRUCTION MANAGEMENT SERVICES FOR THE PHASE 1 PROJECTS (PUBLIC SAFETY CENTER, FIRE STATION 52, AND FIRE STATION 57) OF THE ESSENTIAL FACILITIES STRATEGIC PLAN

RECOMMENDATION:
Adopt the Resolution (Attachment A) authorizing the City Manager to execute a Professional Services Agreement with Kitchell CEM Inc. (Kitchell) for project and construction management services for Phase 1 of the Essential Facilities Strategic Plan.

BACKGROUND:
A separate item on tonight's City Council agenda is for architectural and design, bidding and construction administration services for the Phase 1 projects of the Essential Facilities Strategic Plan. That item contains a more detailed "Background" of the effort to-date. This contract, with Kitchell, is for the associated project management services.

On August 25, 2015 the City Council's Facilities Subcommittee interviewed Kitchell for project and construction management services related to this project and recommends that the City continue working with this firm under a new contract for the next phase of the project. A proposed Professional Services Agreement is attached as Attachment B, and would be attached to and approved by the Resolution, subject to final approval as to form by the City Attorney.

ANALYSIS:
Each of the three Phase 1 projects includes a work plan composed of two key tasks (see Exhibit 1 of Attachment B for more details):

FOR CITY CLERK ONLY

File No.: ______________________________
Council Meeting: ______________________
Disposition: __________________________
1. Planning, Program / Design and Bid Phase Management
This task includes general project management of the projects through the awarding of the bids, including facility assessments, temporary relocation planning, cost estimates, coordination and administration of the bid process and preparation of construction of contracts, value engineering (as necessary), and regular status reports.

2. Construction Administration / Post-Construction and Project Closeout
This task includes general construction management duties to oversee construction activities, monitor schedule and budget, coordinate inspections and requests for information, administer change orders and submittals, perform field inspections and evaluations, and provide regular status reports. Post-construction and closeout duties include assisting the preparation of punch-lists, coordination of all closeout items, resolution of any outstanding issues, preparation of final closeout report, and coordination of move-in schedules and plans.

The proposed Professional Services Agreement provides that each task will be individually authorized by a specific Notice to Proceed issued by the City. Should the City choose not to issue a Notice to Proceed, choosing, in effect, to terminate the Agreement, the Agreement allows the City to do so and compensate Kitchell for services performed up to the date of termination.

Value Engineering
The proposed Professional Services Agreement includes up to $63,720 for value engineering at 100% design development as necessary. This task would include written recommendations to the City.

Reimbursable Expenses
The proposed Professional Services Agreement includes up to $79,497 for reasonable and customary reimbursable expenses submitted separately and approved by the City. Reimbursable expenses may include: project office and equipment, telecommunications, postage, consumables, plans/prints/photos and project-related travel. The cost and/or the time of commute travel will not be charged to the City.

Schedule
The previously described scope of work is anticipated to begin immediately and take approximately three years and nine months. Below is a summary of the approximate schedule for each project with a more detailed overall schedule available in Exhibit 2 of Attachment B.

<table>
<thead>
<tr>
<th>Conceptual Design</th>
<th>Public Safety Center</th>
<th>Fire Station 52 &amp; 57</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid/Award</td>
<td>Mar 2017 to Jun 2017</td>
<td>Oct 2016 to Jan 2017</td>
</tr>
<tr>
<td>Construction</td>
<td>Jun 2017 to Jun 2019</td>
<td>Jan 2017 to Mar 2018</td>
</tr>
</tbody>
</table>
Consultant Selection
In general, once a project is ready for construction, the construction manager role is an essential one to deliver the project on time and budget. During the Strategic Planning phase the Facilities Subcommittee and staff indicated a preference for bringing this expertise into the project at the initial stage, so that the entire process takes place with the constructability and overall success of the end projects in mind.

Kitchell is recommended due to their outstanding performance in developing the Essential Facilities Strategic Plan, as well as their experience, including recent construction management of public safety buildings in Marin County, and exceptional references. It should be noted that Kitchell typically estimates the amount of time needed on a project and then only charges for actual time used.

The project manager for Kitchell will be Bill Johal who is a Certified Construction Manager (CCM). Mr. Johal has worked in a similar capacity for projects such as: the Central Marin Police Authority Headquarters in Larkspur, the Novato Fire Station No. 64, and the Novato Civic Center City Administration Offices among many other projects.

COMMUNITY OUTREACH:
During the development of the Essential Facilities Strategic Plan, Kitchell developed a Communications Plan that identifies strategies to enhance engagement and transparency throughout the Essential Facilities project including design and construction. A webpage has been created at www.cityofsanrafael.org/facilities with information about the projects, including the approved Strategic Plan. To-date, staff has conducted project updates to a variety of community and stakeholder groups including the Federation of San Rafael Neighborhoods, North San Rafael Coalition of Residents, Business Issues Committee, San Rafael Chamber of Commerce Economic Vitality Committee, and multiple updates with the San Rafael Fire Commission.

Each project will undergo additional outreach, with neighbors and other stakeholders to review operational and design issues. Opportunities for community participation include workshops as well as public meetings with the Design Review Board, Planning Commission and the City Council.

FISCAL IMPACT:
The proposed Professional Services Agreement includes all three buildings of the Phase 1 projects and totals $3,171,060 in project and construction management services, up to $63,720 in value-engineering services, and up to $79,497 in reasonable and customary reimbursable expenses for the professional services as detailed in the attached scope of work.

These funds will be appropriated from the portion of Measure E General Fund revenues allocated to public safety facilities construction and improvements.

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 the resolution with modifications to the Professional Services Agreement, subject to approval by Kitchell;
3. Direct staff to return with more information;
4. Take no action.
RECOMMENDED ACTION:
Adopt the Resolution authorizing the City Manager to execute a Professional Services Agreement with Kitchell CEM Inc. for project and construction management services for Phase 1 of the Essential Facilities Strategic Plan.

ATTACHMENTS:
- A. Resolution
- B. Professional Services Agreement with:
  - Exhibit 1 - Scope of Services and Cost Summary
  - Exhibit 2 - Schedule
RESOLUTION NO. ______

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KITCHELL CEM INC. FOR PROJECT AND CONSTRUCTION MANAGEMENT SERVICES FOR THE PHASE 1 PROJECTS (PUBLIC SAFETY CENTER, FIRE STATION 52, AND FIRE STATION 57) OF THE ESSENTIAL FACILITIES STRATEGIC PLAN

WHEREAS, in October, 2014, staff issued a Notice Inviting Proposals for Project Management and Pre-Construction Services for an Essential Facilities Strategic Plan that indicated the potential for future phases under a separate contract; and

WHEREAS, Kitchell CEM, Inc. was selected and provided project management and pre-construction services for the development of the Essential Facilities Strategic Plan; and

WHEREAS, on July 20, 2015, the City Council unanimously approved the Essential Facilities Strategic Plan; and

WHEREAS, the City is entering into the architectural and design phase of the Essential Facilities project; and

WHEREAS, on August 25, 2015, Kitchell CEM was interviewed and selected by the City Council Facilities Subcommittee to perform project and construction management services for the Phase 1 projects (Public Safety Center, Fire Station 52 and Fire Station 57) of the Essential Facilities Strategic Plan; and

WHEREAS, on August 25, 2015, the City Council's Facilities Subcommittee decided to recommend to the full City Council an Agreement with Kitchell CEM for their project and construction management services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Rafael does hereby authorize the City Manager to execute, on behalf of the City of San Rafael, a Professional Services Agreement, in the form attached hereto, with Kitchell CEM, Inc., for project and construction management services for the Phase 1 projects (Public Safety Center, Fire Station 52 and Fire Station 57) of the Essential Facilities Strategic Plan, subject to final approval as to form by the City Attorney.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of San Rafael does hereby authorize the appropriation of $3,314,277 from General Fund Measure E revenues to fund this Agreement for the corresponding fiscal years of the agreement.

I, ESTHER 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 21st day of September, 2015 by the following vote, to wit:

AYES:
NOES:
ABSENT:

ESTHER C. BEIRNE, City Clerk
AGREEMENT FOR PROFESSIONAL SERVICES
FOR PROJECT AND CONSTRUCTION MANAGEMENT SERVICES

This Agreement is made and entered into this 1st day of October, 2015, by and between the
CITY OF SAN RAFAEL (hereinafter "CITY"), and Kitchell CEM Inc., a California Corporation
(hereinafter "CONTRACTOR").

RECITALS

WHEREAS, in October, 2014, CITY issued a Notice Inviting Proposals for Project
Management and Pre-Construction Services for an Essential Facilities Strategic Plan that
indicated the potential for future phases under a separate contract; and

WHEREAS, CONTRACTOR was selected by CITY to provide, and did provide,
project management and pre-construction services for the development of the Essential Facilities
Strategic Plan; and

WHEREAS, on July 20, 2015, the City Council unanimously approved the Essential
Facilities Strategic Plan; and

WHEREAS, CONTRACTOR expressed an interest in performing the project
management and pre-construction services required for implementation of Phase 1 of the
Essential Facilities Strategic Plan, and was interviewed for that project by the City Council’s
Facilities Subcommittee on August 25, 2015, and

WHEREAS, on August 25, 2015, the City Council’s Facilities Subcommittee decided to
recommend to the full City Council, and the City Council, on September 21, 2015, authorized,
entering into a Professional Services Agreement with CONTRACTOR for program, design and
construction management services needed to implement Phase 1 of the Essential Facilities
Strategic Plan;

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. PROJECT COORDINATION.

A. CITY’S Project Manager. The Assistant 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. Bill Johal 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 shown in the letter from CONTRACTOR dated September 4, 2015 re “Fee Proposal for Program, Design and Construction Management for the Phase 1 Projects (Public Safety Center/Fire Station 51, Fire Station 52/Fire Training Center and the Fire Station 57) of the Essential Facilities Strategic Plan”, attached hereto as Exhibit 1 and incorporated herein by reference. CONTRACTOR shall provide such services consistent with the schedule set forth in Exhibit 2 attached hereto and incorporated herein by reference; provided that regardless of such schedule CONTRACTOR shall not begin work on any “Task” described in Exhibits 1 for the three Phase 1 projects unless and until CITY, through its PROJECT MANAGER, serves CONTRACTOR with written “Notice to Proceed” with that Task.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4, and coordinate with CONTRACTOR regarding key aspects of the project and construction management phases. CITY shall provide CONTRACTOR with a written “Notice to Proceed” when CITY desires CONTRACTOR to begin any individual “Task” described in Exhibit 1 for the three Phase 1 projects; provided, however, that CITY shall not be required to issue a “Notice to Proceed” as to any Task should CITY determine to terminate this Agreement as provided in Paragraph 6 below.

4. COMPENSATION.

For the full performance by CONTRACTOR of the “Tasks” described in Exhibit 1, CITY shall pay CONTRACTOR the compensation as set forth in Exhibit 1, specifically, professional services fees of $589,935 for planning, program/design and bid phase management services; $2,581,125 for construction administration and closeout services; and up to $63,720 in value-engineering services; and reasonable and customary reimbursable expenses of up to an additional $79,497, for a total contract amount not to exceed $3,314,277. “Reasonable and customary reimbursable expenses” shall include, but are not limited to, project office and equipment, telecommunications, postage, consumables, plans/prints/photos and project-related travel, and shall be submitted separately and approved by the City. The cost and/or the time of commute travel shall not be charged to the City.

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 3 years, 9 months commencing on October 1, 2015.
and ending on June 30, 2019. Upon mutual agreement of the parties, and subject to the approval of the City Manager the term of this Agreement may be extended for an additional period but not longer than one year.

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. CONTRACTOR shall be entitled to compensation for services performed, in a manner satisfactory to the CITY, up to the date of Termination.

   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/two million dollars ($2,000,000) 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:**

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

**TO CONTRACTOR’s Project Director:**

Kitchell CEM Inc., Attn: Bill Johal  
2750 Gateway Oaks Drive, Suite 300  
Sacramento, CA 95833

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**

JAMES M. SCHUTZ, City Manager

**CONTRACTOR**

By: __________________________

Name: __________________________

Title: __________________________

ATTEST:

ESTHER C. BEIRNE, City Clerk

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney
September 4, 2015

Jim Schutz  
Assistant City Manager  
San Rafael City Hall  
1400 Fifth Avenue, Room 203  
San Rafael, California 94915-1560

Re: Fee Proposal for Program, Design and Construction Management Services for the Phase 1 Projects (Public Safety Center/Fire Station 51, Fire Station 52/Fire Training Center and the Fire Station 57) of the Essential Facilities Strategic Plan.

Dear Mr. Schutz,

Thank you for the opportunity to submit a fee proposal for the Program, Design and Construction Management Services for the Phase 1 Projects (Public Safety Center/Fire Station 51, Fire Station 52/Fire Training Center and the Fire Station 57) of the Essential Facilities Strategic Plan. On behalf of our entire team, I personally would like to thank you and the members of the Facilities Subcommittee for this opportunity. We are very excited about continuing our relationship with the City on this important project.

The following is what we perceive the Scope of Services to be within each phase of the these projects and a fee proposal for the identified tasks is shown below;

1. Planning, Program/Design and Bid Phase Management for Phase 1 Projects:

   • Develop and Manage Master Schedule
     - Master Schedule to include Planning, Design, Bid and Award, Construction, and Closeout Phase milestones and all activities necessary to ensure project completion by the City’s targeted date
     - Update Master Schedule during all Project phases
   • Develop and Manage Master Budget and Cost Control Information
     - Master Budget to cover all phase of the Project
     - Update Master Budget over all phases
   • Assist City in Facilities Assessment
     - Review existing utility and site constraints
     - Assist in temporary relocation planning
     - Assist in determining Project property needs
   • Assist City in Local Entitlement, Design Review Committee and Permitting Processes
     - Assist City in obtaining CEQA approval and integrating CEQA requirements into the bid documents
     - Meet with City planning and building department staff as required
     - Prepare Project applications
     - Monitor City approval process
   • Provide advice regarding Project Construction Phasing approaches with Schedule and Budget impacts
   • Monitor and Update Project Budgets and Schedules
   • Oversee Architect and Sub consultants
   • Provide a Cost Estimates at 100% Design Development. Upon review of the AE’s 100% Design Development estimate, provide an estimate reconciliation and provide written recommendations to the City.
   • Perform Constructability at 50% or 75% Construction Documents and back-check at 100% Construction Documents and provide written recommendations to the City and Design Team.
   • Perform Value Engineering at 100% Design Development and provide written recommendations to the City (if necessary). This item is not included in the total cost and is an additional service. It can be added into the contract via amendment if any or all of the Phase 1 projects experience budget overruns.
• Review and Assess Life Cycle Costs
• Coordinate Project with Utility Companies
• Coordinating Construction Documents including plans and specifications, bid documents, construction contracts, general and special conditions
• Administer Bid Process for the Construction Phase of each respective project listed
• Stimulate Bid Interest
• Assist in Preparing Bid Documents
  o Identify specific construction site boundaries, access, fencing, work hours, contractor conduct requirements, and security requirements in the bidding documents.
  o Manage the process for the assembly, reproduction and distribution of the bid documents to prospective bidders.
  o Clarify scope of each trade.
  o Develop a Master Bid/Award Schedule including construction milestones.
  o Assist the City and the Architect in the modification of or addition of special or general conditions for Contract(s) that might be needed for unique Project or bid package conditions.
• Prepare and oversee the General Contractor Pre-qualification process.
• Conduct Pre-bid and Pre-construction Meetings.
• Conduct Bid Openings.
• Prepare Bid Analyses and Assist City in Tabulating Bids Received
  o Review bids for compliance with bidding requirements.
  o Verify contractor license status, check references.
  o Make recommendations to City for award of contracts or rejection of bids.
• Conduct Pre-Award Conference with Successful Bidder.
• Assist City in preparing Construction Contracts for execution.
• Provide Quarterly Program and Project Status Reports throughout every phase of the project. Report to include overall status or each project, program and project budget and schedule updates, issues update and progress photographs.

2. Construction Administration for Phase 1 Projects:

• Develop a Construction Management Plan with City, Architect, and Contractors to clearly define roles and responsibilities during construction.
• Conduct a Pre-Construction Conference with the Contractor and major trade subcontractor to review Project reporting procedures and rules and safety protocol.
• Provide full-time on site staff for Administration of the Construction Contract(s).
• Review Contractor’s Construction Schedules for conformity with the requirements of the Contract and conformity with the Master Schedule.
  o Ensure that Contractors provide detailed construction schedules, including activity sequences and durations, submittal schedule, or procurement schedule for products that require long lead-time.
• Monitor Contractors’ Contract Compliance.
• Identify Variances between actual or forecasted cost and budgeted costs and each Construction Contract.
  o Advise the City whenever projected costs exceed budgets or estimates.
• Conduct Regular Construction Meetings with the Contractor(s) to discuss and resolve such matters as progress, quality, and scheduling.
  o Prepare and promptly distribute minutes.
• Establish Notification Procedures for any Utility Shutdowns that impact the progress of the work.
• Coordinate the Testing and Inspection of the Project.
  o Review test reports and make recommendations as necessary.
  o Schedule City and special inspections.
• Produce Monthly Cost Reports to monitor the current and project final costs of the project.
  o Prepare cash flow projections as needed.
• Administer Change Orders.
  o Review Contractor requests for changes.
EXHIBIT 1

- Determine cause of the request
- Assemble and evaluate information concerning the request
- Provide a written analysis of the Change Order
- Administer Submittals and shop drawing logs
- Coordinate, review and Manage Requests for Information (RFI)
- Produce Weekly Management Report Summary defining the progress of the work including change orders, RFI's, submittals, schedule and potential claims. Produce a more detailed monthly report of the same items
- Administer Contractor Payment Applications
  - Development and implement procedures for review and processing Contractor’s applications for payment
  - Review payment applications and documentation
- Oversee Dispute Resolution Process
- Perform Quality Control of Contractor work
- Perform Field inspection to evaluate work in progress to confirm that it conforms to the contract documents and make daily observations of weather, number of workers, work accomplishes, problems encountered, and other relevant data. Take digital photographs of project site
- Keep local Government Agencies informed of the progress of the project as required.
- Monitor the Contractors’ Safety Program
- Keep copies of all Project documents for delivery to the City upon Project completion

3. Post Construction /Project Closeout for Phase 1 Projects:

- Observe, with City's maintenance personnel, the Contractor's checkouts of utilities, operational systems and equipment, and start-up and testing
- Prepare in conjunction with the Architect and City all punch-lists. Monitor the completion of the punch-lists by the contractors
- Determine, with the Architect and City, when the facility or designated portions are substantially complete
- Coordinate and receive all close-out items including as-built drawings, operation and maintenance manuals, and warranties from contractors & manufacturers as required and coordinate with property/facilities management staff
- Assist with resolving all contract issues, warranties, bonds, etc. at closeout of project.
- Prepare a final close out report with recommendation as to final payment, notice of completion, and file system for retrieval of closeout documentation
- Assist with obtaining occupancy permit.
- Assist with commissioning the building and owner training
- Transmit Project documents to the City after final close-out tasks are complete.
- Assist City in developing and implementing transition and move-out/move-in schedules and plans

The fee to provide the above scope of services for the Program, Design and Construction Management Services for the Phase 1 Projects is as follows:

1. Planning, Program/Design and Bid Phase Management for Phase 1 Projects: $ 589,935
2. Construction Administration and Closeout for Phase 1 Projects: $ 2,581,125
   $ 3,171,060

The proposed fee utilizes the level of staff and the designated number of hours for the respective staff member during each Task identified on the attached Staffing Fee Timeline. Reasonable and customary reimbursable expenses would be submitted separately to the above costs. Reimbursable expenses may include; Project Office and equipment, Telecommunications, Postage, Consumables, Plans/Prints/Photos and Project-related travel. Please note that the above fee does not include any staff time for the Phase 2 projects. As the exact scope of the Phase 2 projects (Renovations at Station 54 and 55, Maintenance at Station 56 and the Repurposing of City Hall) are not yet completely defined due to budget constraints, a second fee proposal for

Kitchell CEM

2750 Gateway Oaks Drive | Suite 300 | Sacramento, California 95833 | Phone 916.648.9700 | Fax 916.648.6534 | www.kitchell.com
the Program, Design and Construction Management Services for the Phase 2 projects will be submitted separately at a later date.

In addition, Kitchell would highly recommend that the following Engineering and Architectural Support Services be added to the Planning, Program/Design and Bid Phase Management scope for the Public Safety Center/Fire Station 51, Fire Station 52/Fire Training Center and the Fire Station 57 projects should any or all of the projects experience budget overruns. This item can be added into the contract via amendment. The additional cost for this service is as follows;

- Design Development (DD) Phase Value Engineering (if necessary): $63,720

In preparing this fee we assume a contract start date for the Planning, Program/Design and Bid Phase Management scope of services of October 2015 and a completion date of April 2019 for the construction of the Phase 1 projects.

Thank you for the opportunity to provide these services. Our resources are in place and we are ready to commence with this work. If you have any questions, please do not hesitate to contact me at this office.

Sincerely,

Bill Robal
Project Director

Kitchell CEM
2750 Gateway Oaks Drive | Suite 300 | Sacramento, California 95833 | Phone 916.648.9700 | Fax 916.648.6534 | www.kitchell.com
City of San Rafael \n
City of San Rafael Essential Facilities PM/CM Services

Staffing Timeline for Program Management and Construction Management for the Phase 1 Projects: Public Safety Center and Fire Station 51, Fire Station 52, and Fire Training and Fire Station 57

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug 2019</td>
<td>Project Kickoff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sep 2019</td>
<td>Program Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oct 2019</td>
<td>Construction Management</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nov 2019</td>
<td>Site Selection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dec 2019</td>
<td>Design Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan 2020</td>
<td>Environmental Impact Assessment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Feb 2020</td>
<td>Permit Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar 2020</td>
<td>Construction Contract Awarded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apr 2020</td>
<td>Construction commencement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May 2020</td>
<td>Construction progress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jun 2020</td>
<td>Construction completion</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Exhibit 1

Note: The timeline is subject to change due to unforeseen circumstances.