

TOWN OF  
**SAN ANSELMO**  
EST. 1907

**TOWN OF SAN ANSELMO, CALIFORNIA  
REQUEST FOR PROPOSALS**

**March 22, 2022**

**CONSULTANT SERVICES FOR THE PREPARATION  
OF AN UPDATE TO THE HOUSING ELEMENT OF THE  
TOWN'S GENERAL PLAN FOR THE 6<sup>th</sup> HOUSING ELEMENT CYCLE**

**PROPOSALS ACCEPTED UNTIL  
APRIL 8, 2022, AT 12:00 PM PDT**

**TOWN CLERK  
525 SAN ANSELMO AVENUE  
SAN ANSELMO CA 94960**

## Background

The Town of San Anselmo is 2.7 square miles is approximately 12 miles north of the Golden Gate Bridge. The Town is home to about 13,000 residents and has 5,518 housing units. Town land uses are primarily residential. In 2021, the mean/median price of single-family homes was \$1,828,584/\$1,600,000.

The Town seeks proposals from qualified consultants or consultant teams to complete a housing element update, related rezoning and all necessary environmental review as required under State law, in a manner consistent with the Regional Housing Needs Allocation for the 6<sup>th</sup> Housing Element cycle planning period (2022-2030).

The Town of San Anselmo has a RHNA of 833 units, including 541 units of affordable housing. Most of the Town was subdivided into single family residential lots or small commercial sites by 1970 and there are no large vacant sites available for development. The majority of the town sites are developed lots less than ½ acre in size.

<b>San Anselmo RHNA Allocations</b>		<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>	<b>Total</b>
1st Cycle	1980- 1988		120	37	176	333
2nd Cycle	1988- 1998	9	8	9	21	47
3rd Cycle	1999- 2006	32	13	39	65	149
4th Cycle	2007- 2014	26	19	21	47	113
5th Cycle	2015- 2023	33	17	19	37	106
<b>6th Cycle</b>	<b>2023- 2031</b>	<b>253</b>	<b>145</b>	<b>121</b>	<b>314</b>	<b>833</b>

The Town expects that the following approved units will be under construction when the reporting period begins:

	<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>	<b>Total</b>
<b>Approved/Under Construction</b>	<b>6</b>	<b>16</b>	<b>28</b>	<b>26</b>	<b>76</b>

Based on building permits issued for ADUs since the Town relaxed its standards in 2018-2019, the town expects the RHNA to accommodate the following ADUs based on permit issuance trends/forecasting,

affordability documentation,<sup>1</sup> and inclusion of strong policies and programs that commit to incentivizing ADUs:

	<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>	<b>Total</b>
<b>ADUs</b>	<b>71</b>	<b>71</b>	<b>71</b>	<b>24</b>	<b>237</b>

Estimated remaining need to plan for in housing element:

	<b>Very Low</b>	<b>Low</b>	<b>Moderate</b>	<b>Above Moderate</b>	<b>Total</b>
<b>Units</b>	<b>176</b>	<b>58</b>	<b>22</b>	<b>264</b>	<b>520</b>

San Anselmo’s last housing element was certified by the California Department of Housing and Community Development (HCD) and is available [here](#).<sup>2</sup> The Town has completed a review of the current housing element, which may be found [here](#).<sup>3</sup>

While a number of important housing issues will need to be considered and addressed through the update process, the most significant work effort is expected to be 1) documenting why existing uses are not an impediment to additional residential development of low-income housing; and 2) collecting local knowledge and identifying contributing factors and strategies/actions for Affirmatively Furthering Fair Housing.

To achieve that, we anticipate pursuing the following approaches:

- Housing by right on all commercially zoned sites with Objective Design and Development Standards.
- Minimum inclusionary housing of at least 15% Very Low Income, which qualifies developers for use of Density Bonus and Incentives and Concessions.

The selected consultant(s) will partner with town staff to explore, analyze, and implement these approaches in addition to facilitating community engagement, working with our elected and appointed officials to present recommendations and get feedback, and coordinate with HCD to help ensure ultimate certification of the updated element.

Through San Anselmo’s engagement in a countywide collaborative and ABAG’s Regional Housing Technical Assistance Program, we anticipate a reduction in costs for some core update tasks, as detailed below. The Town encourages use of materials developed by the County of Marin and Association of Bay Area Governments (ABAG). Respondents should be prepared to use and/or adapt this material as appropriate, and factor that into their proposal.

<sup>1</sup> DRAFT Affordability of Accessory Dwelling Units A report and recommendations for RHNA 6 Prepared by the ABAG Housing Technical Assistance Team with Funding from REAP 9/8/2021

<sup>2</sup> <https://www.townofsananselmo.org/216/Plans-Policies-and-Regulations>

<sup>3</sup> <https://www.townofsananselmo.org/1517/Housing-Element-Update>

## Scope of Services

The Town of San Anselmo is seeking professional consulting services to update the Town's adopted housing element in a manner consistent with current State law, ensuring certification of the final element by HCD by January 2023.

Proposals must address the following tasks, providing a description and timeline of how they would be accomplished. Additional or optional tasks may be included and creative approaches are welcome. The final scope of work will be subject to refinement and mutual agreement following the project's launch and further discussion.

### 1. Project Management and Coordination

This task covers communication and coordination between the consultant and jurisdiction staff, including meetings, phone conferences, email exchanges, and other communications to ensure timely delivery and adoption of the Town's updated housing element. Proposal should identify the number of meetings anticipated and expectations for jurisdictional staff. Strategies or practices to ensure clear and timely communication and effective project coordination should be described. The consultant is expected to coordinate with HCD to maximize the likelihood of acceptance of deliverables..

### 2. Community Outreach and Engagement

The consultant should develop a program that effectively reaches, educates, and engages the community throughout the Housing Element update. This should include strategies to ensure broad inclusion, particularly of hard-to-reach groups and special needs populations, with special attention given to communicating information so it is accessible and easy to understand. The Town has started housing element outreach and outreach should continue for feedback on important topics such as draft ideas, site options, the draft Housing Element, and any environmental review. Please discuss options for virtual as well as in person meetings, depending on changing safety considerations. Translation services must be available throughout the review process and the Town may have access to REAP funding for translation services. The consultant should lead the engagement. The element must describe how comments were considered and incorporated into the element. At a minimum outreach should consist of:

- Two community meetings
- One community meeting with the Town's Racial Equity Ad hoc Committee focused on goals and programs for Affirmatively Furthering Fair Housing
- Online/virtual participation opportunities (the Town has license Balancing Act license or another program may be used)

Staff developed a [plan for outreach and engagement](#) that may be considered by the consultant. An online survey in English and Spanish has already been widely circulated to the community and has received approximately 250 responses to date. The Town has created a website for the project that may be used by the consultant <https://www.townofsananselmo.org/1517/Housing-Element-Update>

### **3. Housing and Special Housing Needs**

ABAG's Regional Housing Technical Assistance Program has provided jurisdiction-specific graphs and write-ups for all required data, including population, demographic, housing, market conditions and regional comparisons. The housing element consultant will tailor the work as needed. The element must provide an analysis of the existing needs and resources for each special need group (availability of shelter beds, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

The Town's housing element will need to address farmworker housing. MTC-ABAG will release a report to help jurisdictions meet their obligation to analyze and plan for farmworker housing needs in their Housing Elements that the consultant should incorporate into the element.

### **4. Housing Constraints**

Identify potential and actual governmental and nongovernmental constraints for the preservation, protection, or production of housing across income levels within the town.

The element must also discuss and analyze development standards that are not a constraint and allow maximum permitted densities. ABAG's Regional Housing Technical Assistance Program is expected to provide all cross-jurisdictional comparisons necessary for this task (e.g., comparison of fees and processing time). It will also provide write ups of typical countywide non-governmental constraints, including community opposition to housing, cost of construction, limited availability of land and other topics.

The consultant must analyze and account for the likelihood of residential in zones that allow 100 percent nonresidential uses. The consultant must identify factors that support redevelopment of nonvacant sites and should analyze and discuss how the factors are indicative of redevelopment potential. The element must analyze existing uses with sufficient detail to demonstrate the potential for additional development in the planning period and the extent that existing uses may impede additional residential development.

The Town currently has no inclusionary housing requirements but is considering adoption of an inclusionary housing ordinance, working with other Marin jurisdictions. The consultant will receive the results of a workshop with developers soliciting feedback on the potential requirements.

### **5. Existing Housing Element**

Town staff has reviewed the current Housing Element and has identified San Anselmo's success in accomplishing/implementing the identified goals, policies and programs for the 2021 Annual Report to the State (document [here](#)). The review provides where goals, policies or programs are in progress, should be abandoned or have not proven effective.

The consultant is asked to review and provide, if necessary, additional evaluation of the effectiveness of past goals, policies, and related actions in meeting the housing needs of special

needs populations (e.g., elderly, persons with disabilities, large households, female-headed households, farmworkers, and persons experiencing homelessness).

## **6. Sites Inventory**

Prepare the sites inventory section of the Housing Element, demonstrating how the Town of San Anselmo will satisfy its RHNA in each income category. This includes identifying safe assumptions, evaluating sites, and analyzing potential policy strategies to increase site capacity, demonstrating development viability (per State law), and inputting the information into HCD's electronic form for submittal with the updated element.

Staff has prepared a [preliminary inventory](#) of sites that are viable for redevelopment that has passed initial review by the Affirmatively Furthering Fair Housing Consultant retained by the County of Marin.<sup>4</sup> Staff has also prepared shapefiles with sites included in the last two housing elements (see 2015-2023 Housing Element sites on map).

The housing element must rely upon nonvacant sites to accommodate the majority of the RHNA for lower income households. The consultant must demonstrate existing uses are not an impediment to additional residential development and include analysis on development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. (Gov. Code, § 65583.2, subd. (g).)

Staff has shapefiles and a draft Housing Element Sites Inventory Form for remaining vacant lots, which are primarily zoned for market rate single family housing. The Town staff recently conducted a windshield survey of housing in need of rehabilitation and replacement.

## **7. Goals, Policies, Programs and Quantified Objectives**

Identify goals, policies, programs and quantified objectives to include in the Housing Element to ensure compliance with State law and effective response to the housing needs, constraints and key priorities identified through the update process. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the General Plan. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency.

To address the program requirements of Government Code section 65583, subdivision (c) (1-6), and to facilitate implementation, programs should include: (1) a description of the Town's specific role in implementation; (2) definitive implementation timelines; (3) objectives, quantified where appropriate; and (4) identification of responsible agencies and officials.

## **8. Rezoning**

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<sup>4</sup> The review did not include Racially Concentrated Areas of Affluence. The County consultant does have a map of the Racially Concentrated Areas of Affluence in the Town.

Based on the sites analyses, work with the Town staff to identify potential areas for rezoning, if necessary. This must include consideration of the State requirement for maintaining an adequate housing sites inventory throughout the eight-year planning period.

Staff's preliminary inventory would require rezoning seven sites from R-1 single family or R-2 lower density multifamily to R-3 high density residential (20 units/acre) to gain 10 units of very low-income housing. However, the Town could select from sites identified in the prior two housing elements that would not require rezoning. The Town's commercial zoning districts are already zoned to allow housing at 20 units per acre and the Town Council is interested in considering "by right" housing policies for the commercial districts. The Town is in the process of considering Objective Design and Development standards for multifamily development.

The Town's two most promising sites for development of a significant number of affordable housing units (006-061-33/300 Sunny Hills Drive/Side by Side and 006-061-36/100 Shaw Drive/Ross Valley School District) were both identified in the last two housing element cycles and have not been developed with housing. Both sites have Specific/Planned Development district zoning, which could allow dense housing with discretionary review. The housing element will need to address any approvals or zoning changes that may be necessary to demonstrate these sites will be feasible for affordable housing development.

#### **9. Draft Housing Element and Public Hearings**

Prepare and submit an administrative draft Housing Element for jurisdictional staff review. Staff will provide a comprehensive set of desired changes. Once edits are complete, prepare a draft Housing Element that is made available to the public and presented to both the Planning Commission and Town Council at public hearings. Based on Commission and Council input, prepare a HCD review draft and submit to HCD for the mandated review.

- Administrative draft and draft housing element (Microsoft Word)
- PowerPoint
- 2 public hearings

#### **10. Final Draft Hearings, Final Adoption and Certification**

The consultant will work closely with HCD and jurisdiction staff to respond to HCD comments and produce a final draft housing element for adoption. Present final draft housing element to the Planning Commission and Town Council at public hearings. Prepare the final Housing Element, including any changes from the public hearings, and submit to HCD for final certification as well as the water/sewer district and the California Office of Planning and Research.

- Draft final and final housing element (Microsoft Word and PDF)
- PowerPoint
- 2 public hearings

#### **11. CEQA Documentation**

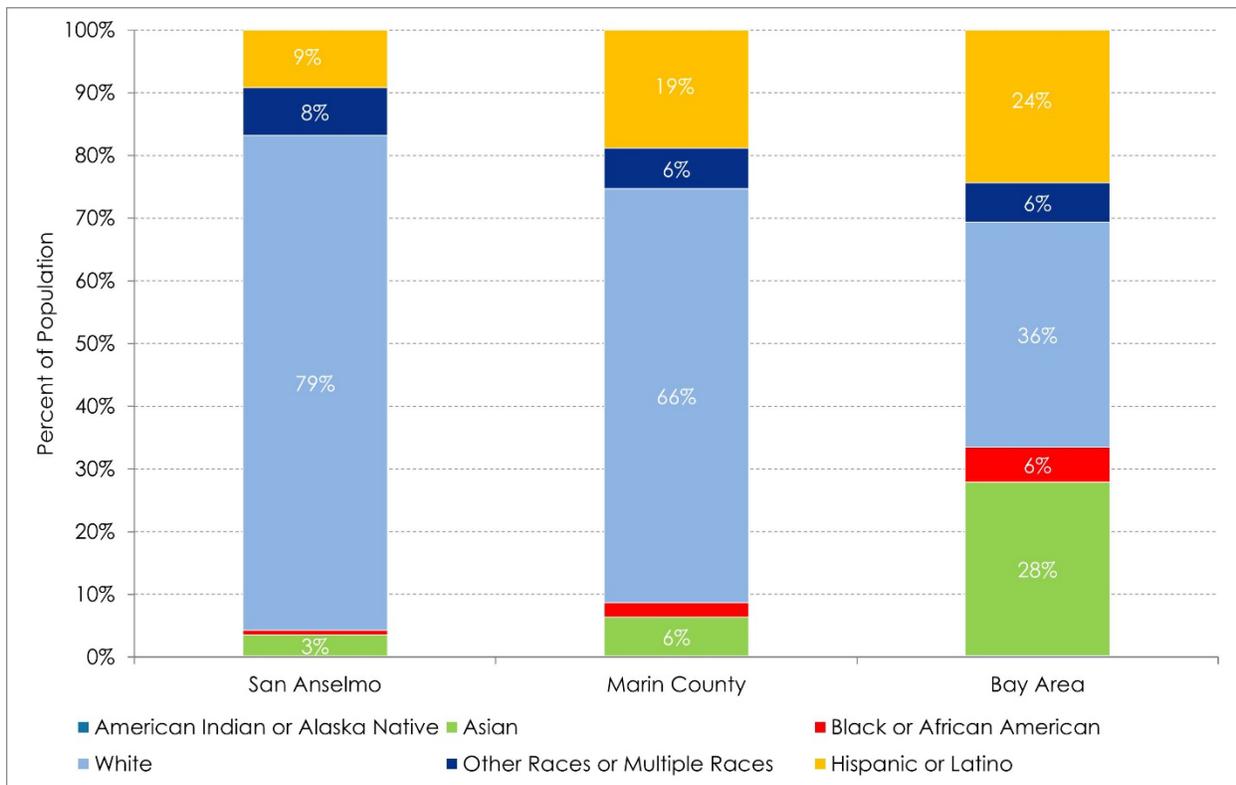
Prepare all required documents for California Environmental Quality Act (CEQA) review and submittal, including the Initial Study, Mitigated Negative Declaration or Environmental Impact

Report and CEQA Determination. This should include public posting and noticing for comment. For budget purposes, consultant may list different prices depending on the level of analysis that may ultimately be needed.

**12. Assessment of Fair Housing and Affirmatively Furthering Fair Housing**

The element must include a complete analysis of AFFH and consider Concentrated Areas of Affluence. The element must have goals and actions based on the outcomes of the complete analysis. Programs must have milestones and metrics to target meaningful AFFH outcomes in the planning period. The element must include relevant factors that contribute to fair housing issues in the Town. The element should analyze historical land use, zoning, or other information that may have impeded housing choices and mobility. Actions must address new housing choices and affordability in high opportunity areas and displacement protection.

The County of Marin has retained a consultant that will provide analysis that can be used for the housing element (see scope of work [here](#)). The Town can send its inventory to the consultant for one additional review under the County of Marin AFFH contract.



The Town has been documenting areas subject to racially restrictive covenants <https://www.townofsananselmo.org/1480/Racial-Covenant-Modification> (see sites colored green) and has scoured the local San Anselmo Herald newspaper for articles related to fair housing. This material is available to be used for historical/background information for the housing element.

Consultant may use Segregation Report for San Anselmo compiled by MTC-ABAG, which provide data and analysis required by the State's new AFFH guidelines and can be placed directly into Housing Element. The report, a collaboration between UC Merced and the RHTA program, present racial and income segregation measures and the region using several indices recommended by the Department of Housing and Community Development (HCD). PDF report, editable Word document, and a master spreadsheet containing all underlying data for the report is available from the Town. Consultant should consult [Final AFFH Data Guidance Checklist](#) to ensure housing element incorporates all required data sources outlined in the Assessment of Fair Housing (AFH) portion of the HCD AFFH guidance memo.

Consultant is encouraged to review [AFFH Policy Tips Memo](#) which summarizes review of HCD comments on Housing Elements submitted from other jurisdictions throughout the state to identify common pitfalls and make recommendations about how Bay Area jurisdictions can craft policies to meet AFFH goals -streamlining the path towards certification.

### **13. Other Services to Be Included**

- It is the Consultant's responsibility to research, collect and verify all information such as existing records and documents including documents furnished by the Town to complete this project on schedule and within budget.
- Provide a detailed project schedule, including major tasks and project milestones and deliverables.
- Prepare monthly written progress reports, including budget and schedule status.

### **Deliverables**

Submit 15 hard copies and electronic (editable native files and final publishable version) files of final versions of all documents/products, including one unbound version and an electronic version in pdf format.

Note: All plans, documents, and drawings both in printed and electronic formats prepared by the consultant for the Town are property of the Town of San Anselmo and are to be submitted to the Town.

### **Submittal and Review Process**

- a. Applicant questions: All questions regarding the RFP shall be submitted in writing to Emily Longfellow [elongfellow@epholtzlaw.com](mailto:elongfellow@epholtzlaw.com). Questions and responses will be posted on the Town website.
- b. Submittal Deadline: APRIL 8, 2022, AT 12:00 PM PDT.
- c. Format and Delivery:  
Electronic submittal is accepted. Coordinate with Carla Kacmar, Town Clerk, at [ckacmar@townofsananselmo.org](mailto:ckacmar@townofsananselmo.org) for file transfer.

Alternatively, submit two (2) letter-sized copies and one digital copy of the technical proposal, proposed timeline, and project budget to and proposals may be mailed directly to or hand delivered/courier to:

Town of San Anselmo  
Town Clerk  
525 San Anselmo Avenue

San Anselmo, CA 94960

- d. Submittals will not be returned.
- e. The Town reserves the right to accept or reject any or all proposals, or to alter the selection process in any lawful way, to postpone the selection process for its own convenience at any time, and to waive any non-substantive defects in this RFP or the proposals.
- f. The Town proposes to short list and interview the most qualified firms for consideration during the RFP process, and to modify work plans and scope during negotiations. The Town reserves the right to negotiate with other qualified persons or firms, or to solicit additional statements of qualifications at any point in the project should it fail to negotiate a reasonable fee with the initially selected person or firm or should that firm fail to execute the Town's Agreement.

**2. Proposed Timeline**

- March 22, 2022: RFP available on the Town of San Anselmo website
- April 8, 2022: Proposals Due at 12 pm PST
- April 11, 2022: Interviews if necessary
- April 26, 2022: Recommendation to the Town Council and selection of consultant

### **3. Proposal Content**

The proposal should include the following:

- a. **FIRM OR PERSON INTRODUCTION:** including information such as form of organization, length of time in business, office location(s), number of staff and a general summary of qualifications documenting the strengths of the firm or person, areas of expertise and licensing.
- b. **APPROACH:** the person or firm's project management practices, methodologies, and processes.
- c. **PROJECT EXPERIENCE:** listing specific planning experience that is related to the type of service required by the project. Project experience should list the type of work provided with the client contact information for each project. If sub-consultants are proposed, include information on joint work, if any, and their roles in those projects.
- d. **WORK PLAN:** detailed work plans with estimated hours by task or project phase.
- e. **KEY STAFF:** including the identification of the Principal-in-Charge and key staff. This section should identify the qualifications and related experience of key staff assigned to the project; and includes their resume showing experience in project management services. Include an organizational chart for this project.
- f. **REFERENCES:** Provide client references, for similar projects in the past five (5) years, that have working experience with the project team and companies proposed for assignment to this project. Furnish the name, title, address, and telephone number of the person(s) at the client reference who is most knowledgeable about the work performed and can comment on the professional qualifications/expertise of the staff.
- g. **LITIGATION:** a list of any current litigation to which the firm or person are parties by virtue of their professional service, in addition to a list of any such litigation from the past ten years.
- h. **DISCLOSURE:** of any past, ongoing, or potential conflicts of interest that the firm or person may have as a result of performing the anticipated work.
- i. **COMMENTS OR REQUESTED CHANGES TO CONTRACT:** The Town of San Anselmo standard Professional Services Agreement is included as an attachment to the RFP. The proposing person or firm will be expected to enter into the standard Agreement.
- j. **PROFESSIONAL FEES:** Include standard hourly fees and charges.

### **4. Evaluation Criteria**

Firm qualifications

Project Team Members' Technical Experience

Project Team Members' graphic presentation

Understanding of Project Issues and Expected Results

Quality of Proposed Work Plan

Quality of References

### **5. Attachments**

Professional Services Agreement Template

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_ 2022, by and between the TOWN OF SAN ANSELMO (hereinafter "**TOWN**"), and \_\_\_\_\_ (hereinafter "**CONTRACTOR**").

### **RECITALS**

**WHEREAS**, TOWN seeks assistance in updating its General Plan Housing Element; and

**WHEREAS**, **CONTRACTOR** provides professional planning services.

### **AGREEMENT**

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

1. **PROJECT COORDINATION.**

A. **TOWN.** The Town Manager shall be the representative of the **TOWN** for all purposes under this Agreement. The Planning Director is hereby designated the **PROJECT MANAGER** for the **TOWN**, 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**. **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 **TOWN** within ten (10) business days of the substitution.

2. **DUTIES OF CONTRACTOR.**

**CONTRACTOR** shall perform the duties and/or provide services as described in the proposal dated \_\_\_\_\_, attached as Exhibit A.

3. **DUTIES OF TOWN.**

The Town shall use staff time and resources as required to support **CONTRACTOR**, such as by providing project plans and information, application checklists, draft staff reports and draft public notices.

4. COMPENSATION.

For the full performance of the services described herein by **CONTRACTOR**, **TOWN** shall pay **CONTRACTOR** as described in the budget of the proposal dated \_\_\_\_\_, attached as Exhibit A. Each month, **CONTRACTOR** shall furnish to the **TOWN** a statement of the work performed for compensation during the preceding month and reimbursable expenditures.

5. TERM OF AGREEMENT.

The term of this Agreement shall begin when this Agreement is signed and continue until June 30, 2023. Upon mutual agreement of the parties, and subject to the approval of the Town Manager, the term of this Agreement may be extended for an additional period of 2 months.

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.

7. OWNERSHIP OF DOCUMENTS.

The proposal calls for **CONTRACTOR** to draft documents for applications in coordination with the Town. Any documents written by **CONTRACTOR** under the terms of this agreement shall be the sole property of **TOWN**. **TOWN** or **CONTRACTOR** 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 **TOWN**, 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 **TOWN** 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. During the term of this Agreement, **CONTRACTOR** shall maintain, at no expense to **TOWN**, the following insurance policies:

1. **CONTRACTOR** shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$1,000,000) per occurrence, four million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. **CONTRACTOR**'s general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10 to provide that **TOWN** and its officers, officials, employees, and agents shall be additional insureds under such policies.

2. **CONTRACTOR** shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than one million dollars (\$1,000,000) per accident. If **CONTRACTOR** owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

B. The insurance coverage required of the **CONTRACTOR** in Subparagraph A above, shall also meet the following requirements:

1. Except for professional liability and worker's compensation insurance, the insurance policies shall be endorsed for contractual liability and personal injury.

2. Except for professional liability and worker's compensation insurance, the insurance policies shall provide in their text or shall be specifically endorsed to name the **TOWN**, its officers, agents, employees, and volunteers, as additionally named insureds under the policies, and to provide that the insurance shall be primary with respect to any insurance or coverage maintained by **TOWN** and shall not call upon **TOWN**'s insurance or 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. **CONTRACTOR** shall provide to Town's Project Manager, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) text from the insurance policies or the endorsements as specified in Subparagraph B (2).

4. 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 Town's 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 insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the Town Attorney.

C. Any deductibles or self-insured retentions in **CONTRACTOR's** insurance policies must be declared to and approved by the Town's Risk Manager and the Town Attorney. At **TOWN's** option, the deductibles or self-insured retentions with respect to **TOWN** shall be reduced or eliminated to **TOWN's** satisfaction, or **CONTRACTOR** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **CONTRACTOR** shall provide to the Project Manager or **TOWN's** 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. **TOWN** reserves the right to obtain a full certified copy of any insurance policy and endorsement 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 Town Attorney.

#### 14. INDEMNIFICATION.

A. Except as provided in Subparagraph B., **CONTRACTOR** shall indemnify, defend, and hold harmless the TOWN, and its officers, employees, and agents ("Town indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the **CONTRACTOR's** performance of its obligations under this agreement or out of the operations conducted by **CONTRACTOR**, including the Town's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the **TOWN**. In the event the Town indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONTRACTOR's** performance of this Agreement, the **CONTRACTOR** shall provide a defense to the Town indemnitees, or at the **TOWN's** option, reimburse the Town indemnitees their costs of defense, including reasonable legal counsels' 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 **TOWN**, 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.

#### 12. NONDISCRIMINATION.



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 **TOWN**.

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 **TOWN**.

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 **TOWN** may deduct from any payment due to **CONTRACTOR** under this Agreement, any monies which **CONTRACTOR** owes **TOWN** 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. TAXES.

**CONTRACTOR** shall pay any and all state and federal taxes and any other applicable taxes. **TOWN** shall not be required to pay for any work performed under this Agreement, until **CONTRACTOR** has provided **TOWN** 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.

**TOWN OF SAN ANSELMO**

**CONTRACTOR**

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