



MAYOR GARY O. PHILLIPS  
VICE MAYOR DAMON CONNOLLY  
COUNCILMEMBER MARIBETH BUSHEY  
COUNCILMEMBER KATE COLIN  
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

CITY MANAGER'S OFFICE  
PHONE: 415-485-3070

## NOTICE INVITING PROPOSALS for ESSENTIAL FACILITIES STRATEGIC PLAN



Date Issued: October 1, 2014  
Proposals Due: October 31, 2014 @ 5 pm

**Proposals shall be clearly marked on the outside with the words:  
“SEALED PROPOSAL FOR ESSENTIAL FACILITIES STRATEGIC  
PLAN – DO NOT OPEN WITH REGULAR MAIL”**

**REQUEST FOR PROPOSAL  
ESSENTIAL FACILITIES STRATEGIC PLAN**

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PUBLIC NOTICE IS HEREBY GIVEN that the City of San Rafael (CITY) invites sealed proposals for the above stated project. Proposals must be prepared in conformance with this Request for Proposals (RFP) and submitted in a sealed envelope plainly marked on the outside "SEALED PROPOSAL FOR ESSENTIAL FACILITIES STRATEGIC PLAN – DO NOT OPEN WITH REGULAR MAIL." Proposers may obtain a copy of the RFP from the CITY website at [www.cityofsanrafael.org/facilities](http://www.cityofsanrafael.org/facilities).

The CITY reserves the right to reject any or all proposals, to waive any irregularity, to accept any bid or portion thereof, and to take all proposals under advisement.

The contract will be administered by the City Manager's Office. Please submit five (5) copies of your proposal and one electronic version (via email or CD/flash drive included with proposal) to the following mailing and email address **to be received no later than 5 PM on Friday October 31, 2014** (late proposals will not be considered):

City of San Rafael  
City Hall  
Office of the City Clerk  
Attn: Jim Schutz  
1400 Fifth Avenue, Room 209  
San Rafael, CA 94901  
[jim.schutz@cityofsanrafael.org](mailto:jim.schutz@cityofsanrafael.org)

**RFP Background**

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The City of San Rafael is a full-service, charter city, with an annual general fund budget of \$61 million. The CITY provides services such as police, fire, street and park maintenance, community development (building and planning), library, recreation, and childcare services to a population of approximately 58,000 over more than 22 square miles of land and bay.

The ability of the CITY's Fire and Police Departments to carry out their mission to serve and protect our citizens and provide a foundation for business prosperity is essential. With an increased population, a rise in demand for emergency responses, current economic constraints, and an aging infrastructure, the ability of our police and fire departments to deliver essential emergency services in the future may be compromised.

The CITY's Police Department (hereafter "SRPD") has a skilled staff of 87 total employees overseeing the Traffic Unit, SWAT team, Foot-beat, Investigations, School Resource, Directed Patrol, Youth Services Counseling, Records, Property Evidence, Dispatch, Permits and Personnel

and Training. Currently, these services are administered from an array of locations and temporary facilities.

The CITY's San Rafael Fire Department (hereafter "SRFD") has 79 total employees trained in specialties including emergency medical care, firefighting, hazardous materials and emergency preparedness. In addition, the SRFD is partnering with the Larkspur Fire Department and the Marinwood Fire Department to provide shared services over an expanded operational area. In order to maintain high quality, cost effective and efficient service, today's "All Risk" public safety entities must have the infrastructure to support and enhance their essential mission.

Starting in 2002, the City Council commissioned important facility studies which resulted in the August 2003, "Strategic Analysis of City of San Rafael Essential Facilities," a companion document also from August 2003 entitled, "Facility Evaluation Report of City of San Rafael Essential Facilities," and a separate study of the San Rafael library.

These facility studies were all very comprehensive and still extremely useful today, over 10 years later, due to their level of detail and recommendations that have largely stood up over time through the review of two citizen committees.

A Critical Facilities Strategy Committee was established in September 2004 to review the August 2003 studies and "recommend to the [City] Council financially sound and politically viable strategies that would assure the ability of San Rafael's public safety facilities and library to meet current and future needs." The Committee issued a report dated April 18, 2005 outlining a series of recommended strategies to address the City's operational budget deficit and strategies to address the seismic and modernization needs of San Rafael's fire stations, City Hall and police facilities, and the Terra Linda and San Rafael Community Centers.

Much of this work led to the local voters passing Measure S in the November 2005 election, a half-cent transactions and use tax with a term of ten years which "filled the hole" of the structural deficit of the time, but did not raise additional funds to address the facility needs.

In November 2007, the City Council established a new Critical Facilities Committee to "educate and inform the community about the current condition and needs for improving our essential service buildings" and "develop financially sound and politically viable implementation strategies to begin addressing the needs of our buildings." The new Committee reviewed the 2003 reports and the work of the prior Committee, studied the issues, and released their final report in August 2009.

Among other recommendations, the August 2009 report advocated putting before the voters "a November 2009 ballot measure authorizing the City to issue up to \$89 million in general obligation bonds, and impose a tax sufficient to upgrade, renovate and replace public safety buildings." It further recommended that the City "pursue financing for the upgrade, renovation or expansion of the downtown main library after securing financing for the public safety

buildings” listed in the Committee’s prioritization. The Committee suggested deferring action on the community centers until a later date.

Such a measure was on the November 2009 ballot as Measure G, which required 2/3rds approval to pass. The measure received just over 61% in favor and thus it was not successful.

As Measure S, from the 2005 election, was nearing its expiration, the City Council made the determination to ask the voters to extend and increase it. In November 2013, the local voters passed Measure E, a three-quarter cent transactions and use tax with a term of twenty years. This tax supplanted the former, one-half cent transactions and use tax (Measure S), effective April 1, 2014.

In February 2014, the City Council indicated that the additional funds from Measure E (i.e., the amounts collected in excess of the current transactions and use tax), approximately \$3.6 million/year, shall be used for public safety facilities improvements and potential construction, and to address other critical public facilities infrastructure. This direction was built into the CITY’s current budget, approved in June 2014.

In October 2014, the results of a SRFD Standards of Cover study, performed by Markus Weisner (FireGeek consulting), will be finalized and available for review.

The City now wishes to have an Essential Facilities Strategic Plan which will build on the foundation of the past studies and committee work, to comprehensively analyze and present a prioritized strategy, considering but not limiting the strategy to the funding available through the additional Measure E funds. At a minimum, the Plan would include the items shown in the following section.

### **Scope of Work**

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The CITY wishes to retain the services of a multi-disciplinary consultancy firm, or firms or individuals (Consultant) working in partnership, to develop an Essential Facilities Strategic Plan to guide improvements to its essential facilities.

The Strategic Plan will include:

- **Updated facility condition assessments.** As mentioned above, comprehensive condition assessments have already been done, but are now over 10 years old. The CITY expects that the condition assessments will only need to be updated to today’s standard. To do so, the Consultant shall be qualified to conduct a full architectural, structural and engineering review of the condition of the facilities included in the 2003 Facility Evaluation Report. The review shall include detailed cost estimates to repair, renovate and maintain the facilities to acceptable conditions including compliance with all current fire and safety codes and ADA requirements.

- **Space needs assessment of essential facilities.** While the building conditions may have not changed substantially since the 2003 study, the CITY's anticipated space needs of essential facilities may be quite different due to changes in staffing levels and shared services since that time.
- **Feasibility of improving existing facilities to meet current and future space and operational needs.**
- **Feasibility of relocating and/or combining selected facilities.** This section relates to the City Hall, Police facility, and all fire stations. In regards to fire stations, this work will be substantially informed through the work of the Standards of Cover study.
- **Descriptions of recommended projects, including site/facility programs and project budgets.**
- **Recommended prioritization, phasing and implementation schedule.**
- **Recommended funding plan given the currently known funding and recommendations for other funding resources such as public safety grants or other methods.**

The CITY plans on providing input through a new Strategic Plan Working Group assembled to work with the firm selected to develop the Essential Facilities Strategic Plan. The Group would be made up of elected officials (the City Council's Facilities Subcommittee), key staff, and community stakeholders. The selected consulting firm would lead a process to build off of the past work in this area to develop an implementable and supportable plan.

The CITY anticipates the key parties as follows:

*City Council Facilities Subcommittee* – policy oversight and direction

*City Manager Nancy Mackle* – day-to-day staff direction

*Project Coordination Manager* - this person, working closely with the City Manager and Assistant City Manager, will coordinate the Essential Facilities Strategic Plan contract and process.

*Consulting Firm* – carry out scope of work of contract

*Strategic Plan Working Group* – works with Strategic Plan consulting firm.

Possible members: City Council Facilities Subcommittee, City Manager and Assistant City Manager, Police and Fire Chiefs, Public Works Director, Fire Department representative, Police Department representative, community stakeholders. The Working Group would be involved in the process (through working meetings rather than report writing) and assist the Facilities Subcommittee in preparing a Subcommittee recommendation to the City Council.

*Technical Advisory Committee* – other city staff or staff from other agencies associated with project e.g. city engineers, safety management, community and economic development, etc.

## **RFP Schedule**

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The following schedule will apply to the RFP and project. The CITY reserves the right to change these dates and will notify consultants if this occurs.

Please note the following critical dates when preparing your response to this RFP:

Release of RFP:	October 1, 2014
Deadline to Submit Written Questions:	October 17, 2014
Proposal Submittal Deadline:	October 31, 2014
Consultant Presentation/Interviews:	Week of November 10 or 17, date TBD
Consultant Selection/Contract formation:	Second half of November/first half of December
City Council Contract consideration:	December 15, 2014
Estimated Project Start Date:	January 1, 2015

Note: All dates except RFP release date, written questions deadline, and proposal submittal deadline are tentatively scheduled and are subject to change.

## **Review of Proposals and Selection of Consultant**

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Proposals submitted will be reviewed by a committee. The committee's evaluation will be based upon, but not limited to:

- Proposer's understanding of the project and the CITY's requested scope of services.
- Proposed project approach as it relates to achieving the CITY's primary objectives.
- Proposer's specific experience as it pertains to scope of work.
- References.
- Responsiveness and overall quality of proposal.
- Rate schedule.
- Project schedule.

While rates are a consideration, the CITY reserves the right to choose the best proposal, which may not be based on rates. After evaluating the proposals and discussing them further with the finalist(s), the CITY will further negotiate the proposed work and/or method and amount of compensation. The consultant selected for this project must comply with all provisions of the CITY's professional services contract. The CITY reserves the right to reject any and all proposals at any phase of the proposal or negotiation.

## **Contact Information**

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Any questions regarding this RFP must be submitted in writing via email and received by the CITY no later than 5pm on October 17<sup>th</sup>, to:

Jim Schutz  
Assistant City Manager  
jim.schutz@cityofsanrafael.org

All responses to questions received will be posted at the CITY website at [www.cityofsanrafael.org/facilities](http://www.cityofsanrafael.org/facilities).

### **Information to be Included in Proposal**

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Interested and qualified firms are invited to submit five (5) copies of their proposal and one electronic version (via CD or flash drive included with proposal) to the following mailing and email address **to be received no later than 5 PM on Friday October 31, 2014** (late proposals will not be considered):

City of San Rafael City Hall  
Office of the City Clerk  
Attn: Jim Schutz  
1400 Fifth Avenue, Room 209  
San Rafael, CA 94901  
jim.schutz@cityofsanrafael.org

The selection of the firm will be made from the information provided. The information should be submitted and organized in the following manner:

1. Transmittal Letter:

The letter of transmittal shall be signed by an individual authorized to bind the proposing entity stating the firm has read and will comply with all terms and conditions of the RFP. Include the name, title, phone, and email for the person responsible for RFP.

2. Table of Contents

3. Background on Firm and Statement of Qualifications:

A brief description of the firm and a summary of the firm's qualifications for this project. Include the size of the organization, location of offices, years in business, name of owners and principal parties, and position titles of staff. Provide an organizational chart showing staff to be assigned to work on the project and their roles on this project. Provide a resume for each proposed key staff member. Include your firm's experience providing similar services to municipal clients.

4. Project Understanding and Approach:

Provide a thorough description of your firm's approach to the project and a proposed project timeline, including key milestones and deliverables. Describe how the firm will complete the Scope of Work as detailed in this RFP. Include a statement of the services your firm feels

differentiates your firm from others. As a part of the approach, identify the responsibilities of the CITY and the responsibilities of the firm.

5. Project Schedule:

Provide a project schedule with significant milestone events/deadlines. Due to the fact that the City will have a 2014 Standards of Cover study completed, in addition to the comprehensive analysis and evaluation work presented in the 2003 reports, the City's expectation is that this project could be completed in three to six months.

6. Firm References:

Provide the following information for similar projects: a) Name, address, and telephone number of the client, b) Time period for the project, c) Brief description of the scope of the services provided, and d) Brief description of the outcome of the project.

7. Rate Schedule:

Provide your firm's schedule of hourly rates (and for any proposed subconsultant firms). Identify:

- Identify the hourly rates, and billing practices for all personnel who may be providing services to the CITY.
- Identify any reimbursable costs.
- Identify which fees, if any, are on a not-to-exceed basis.
- Identify which fees, if any, that you recommend be charged on a fixed fee basis.

8. Regulatory Actions or Legal Issues:

Describe any regulatory actions or legal issues taken against your firm within the past five years in any State, and the current status or outcome. Please include any contract termination or default whether litigated or not. If a firm has no regulatory actions or legal issues, a statement to that effect shall be included in the Proposal.

9. Conflict of Interest:

Describe any actual, apparent, potential, direct or indirect conflicts of interest that may exist with respect to the firm, management, or employees of the firm or other persons relative to the services to be provided for this project. If a firm has no conflicts of interest, a statement to that effect shall be included in the Proposal.

10. Supplementary Information:

The CITY has outlined the requirements of this project in as much detail as is currently known. Please provide any exceptions, additional information, or suggestions that will aid in the CITY's selection process. Please keep these as brief as possible.

## **Additional Information**

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All facts and opinions stated herein are based upon available information and no representations or warranties are made with respect to their accuracy or completeness. It is the responsibility of the RFP recipient to ensure that the information contained herein is accurate and complete.

The RFP and the selection process shall in no way be deemed to create a binding contract, agreement or offer of any kind between the CITY and any entity. In an attempt to reach an agreed upon contract by both parties, the CITY reserves the right to negotiate with the proposer selected by the committee - if the parties cannot negotiate a contract, the CITY reserves the right to negotiate with other proposers or make no award of this RFP. If the CITY selects a respondent pursuant to the RFP, any legal rights and obligations between the successful team, if any, and the CITY will come into existence if and only when an Agreement is approved by the CITY Council and fully executed by the parties. The legal rights and obligations of each party shall at the time be only those rights and obligations which are set forth in the Agreement and any other documents specifically referred to in that Agreement.

The CITY reserves the right to request additional information of any respondent as deemed necessary and appropriate by the CITY. Each entity submitting materials in response to this RFP agrees that the preparation of all material for submittal to the CITY and all presentations are at the respondent's sole cost and expense, and the CITY shall not, under any circumstances, be responsible for any costs or expenses incurred by any candidate respondent. In addition, each proposing entity agrees that all documentation and materials submitted in response to this RFP shall remain the property of the CITY. Subject to California law relating to access to public records, the CITY may be required to publicly disclose all submitted information and materials to third parties requesting such information.

The CITY reserves the right, without notice, to accept or reject any or all responses to this RFP, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, to waive any defects in any proposal, to issue a new RFP at any time, or to hire any entity it deems appropriate in its sole and absolute discretion within or outside an RFP evaluation process.

The CITY is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents or information submitted to the CITY, and Proposer claims that such information falls within one or more CPRA exemptions, Proposer must clearly mark such information "Confidential and Proprietary", and identify the specific lines containing the information. In the event of a request for such information, the CITY will make best efforts to provide notice to Proposer prior to such disclosure.

The CITY reserves the right to amend the scope of services, including adding design and construction-phase services for any project(s) recommended by the Strategic Plan, if the CITY, at its sole discretion, determines that it is in its best interest to do so.

Joint ventures will be approved as long as one firm is named as the prime contract party and the contract contains language that binds all parties. The CITY reserves the right to approve subconsultants in advance. The qualifications of personnel and the details of the work to be provided must be submitted as part of this selection process.

The agreement between the CITY and the firm will be a non-exclusive agreement, which means the CITY is not precluded from hiring other firms should there be a conflict of interest or because of the volume of work.

The firm agrees to procure and maintain throughout the duration of this agreement, insurance as stated in attached sample Professional Services Agreement.

All past reports and findings referred to in this RFP are located at [www.cityofsanrafael.org/facilities](http://www.cityofsanrafael.org/facilities) including but not limited to:

- Essential Facilities Strategic Plan RFP
  - Sample Professional Services Agreement
  - “Strategic Analysis of City of San Rafael Essential Facilities” - August 2003
  - “Facility Evaluation Report of City of San Rafael Essential Facilities” - August 2003
  - Critical Facilities Strategy Committee report - April 2005
  - Update of Essential Facilities Strategy Costs February 2008
  - Critical Facilities Committee report - August 2009
  - Associated CITY staff reports
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**AGREEMENT FOR PROFESSIONAL SERVICES**

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

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and \_\_\_\_\_ (hereinafter "**CONTRACTOR**").

**RECITALS**

**WHEREAS,** \_\_\_\_\_; and

**WHEREAS,** \_\_\_\_\_;

**AGREEMENT**

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

1. **PROJECT COORDINATION.**

A. **CITY’S Project Manager.** The \_\_\_\_\_ 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**. \_\_\_\_\_ 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. **DUTIES OF CITY.**

**CITY** shall pay the compensation as provided in Paragraph 4, and perform the duties as

follows:

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4. COMPENSATION.

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

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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 (\_\_\_\_) year(s) commencing on \_\_\_\_\_ and ending on \_\_\_\_\_. 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 of (\_\_\_\_) year(s).

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:

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

TO **CONTRACTOR**'s Project Director:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**

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

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

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