



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 PROJECT MANAGEMENT AND PRE-CONSTRUCTION SERVICES



Date Issued: October 1, 2014
Proposals Due: October 24, 2014 @ 5 pm

**Proposals shall be clearly marked on the outside with the words:
"SEALED PROPOSAL FOR ESSENTIAL FACILITIES
PROJECT MANAGEMENT AND PRE-CONSTRUCTION SERVICES --
DO NOT OPEN WITH REGULAR MAIL"**

REQUEST FOR PROPOSAL
ESSENTIAL FACILITIES PROJECT MANAGEMENT AND PRE-CONSTRUCTION SERVICES

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 PROJECT MANAGEMENT AND PRE-CONSTRUCTION SERVICES – DO NOT OPEN WITH REGULAR MAIL.”

Proposers may obtain a copy of the RFP from the CITY website at 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 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 24, 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

RFP Background

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.

Separate from this “Request for Proposals for Project Management and Pre-Construction Services”, the City has also sent out a “Request for Proposals for 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 Essential Facilities Strategic Plan (separate RFP) would include:

- Updated facility condition assessments.
- Space needs assessment of essential facilities.
- Feasibility of improving existing facilities to meet current and future space and operational needs.
- Feasibility of relocating and/or combining selected facilities.
- Descriptions of recommended projects, including site/facility programs and project budgets.
- Recommended prioritization, phasing and implementation schedule.
- Analysis of potential funding plan.

The City wishes to contract with a firm to provide Project Management and Pre-Construction Services for the above work, with the potential for future phases under a separate contract.

Scope of Work

The CITY wishes to retain the services of a project management/construction management firm (Consultant) to manage the Essential Facilities Strategic Plan process to guide improvements to its essential facilities. The Consultant will report to and receive direction from the City Manager's Office as informed by the Strategic Plan Working Group (see below). The Scope of Work will include:

Project management of the Strategic Plan process. The Strategic Plan process will consider all of the City of San Rafael public safety facilities which include seven fire stations and a police station. A separate consulting firm will be updating the facility condition assessments, assessing space needs of essential facilities, analyzing the feasibility of improving existing facilities to meet current and future space and operational needs, analyzing the feasibility of relocating and/or combining selected facilities, describing recommending projects including site/facility programs and project budgets, creating a recommended prioritization, developing a phasing and implementation schedule, and developing a funding plan given the known funding available and recommending means for additional funding.

Specifically, the project management services shall include:

- Day to day management of the Strategic Plan process including facilitation of the Strategic Plan Working Group through regular meetings (e.g. twice a month) and communication.
- Planning for the Strategic Plan Working Group with the City Manager's Office.
- Communication management, such as preparing and delivering project status reports and other messaging to the City Council, City employees, the public, and the media.
- Management of the budget for the Strategic Plan.
- Throughout the process of the Strategic Plan, consider the constructability of the facility improvements and provide input into the process as the programs and budgets are being assembled for recommendation.
- Prior to final recommendations of project prioritizations, identify obstacles to construction to prevent errors, delays, or cost overruns.
- Provide input to the site/facility programs and project budgets, prioritization, phasing, and implementation schedule.
- Provide input to Strategic Plan to ensure a set of functional and financially viable projects.

The Scope of Work will follow the same timeline as the Strategic Plan which is anticipated to be between three and six months.

Strategic Plan Working Group. The CITY plans on providing input to the Strategic Plan through a new Strategic Plan Working Group. The Group would be made up of elected officials (the City

Council’s Facilities Subcommittee), key staff, and community stakeholders. The Strategic Plan consultant 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* – **the subject of this RFP.** *This firm/person, working closely with the City Manager and Assistant City Manager, will coordinate the Essential Facilities Strategic Plan contract and process.*
- Strategic Plan Consulting Firm* – the subject of a separate RFP, this firm will prepare the Strategic Plan.
- Strategic Plan Working Group* – 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

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 15, 2014 |
| Proposal Submittal Deadline: | October 24, 2014 |
| Consultant Presentation/Interviews: | Week of November 3 or 10, date TBD |
| Consultant Selection/Contract formation: | November |
| City Council Contract consideration: | December 1 or 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

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

Any questions regarding this RFP must be submitted in writing via email and received by the CITY no later than 5pm on October 15th, 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.

Information to be Included in Proposal

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 24, 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. Assume the Strategic Plan will be completed in approximately 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) and an estimate of hours/month which would be allocated to this project. 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 and which fees, if any, that you recommend be charged on a fixed fee basis.
- Estimate of hours/month necessary for project.

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

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 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

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:

4. COMPENSATION.

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

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