

TOWN OF FAIRFAX

STAFF REPORT

April 1, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Ratify agreement with Brownco Construction for the renovation of the Women's Club restroom

RECOMMENDATION

Ratify agreement with Brownco Construction for the renovation of the Women's Club in an amount not to exceed \$25,000.

DISCUSSION

The renovation of the Women's Club restroom to make it ADA accessible is a project listed in the FY14-15 CIP budget. The majority of the funding (approx. \$20,000) comes from a State Park Grant. As staff took a closer look at the current condition of the restroom, we realized it would require full renovation (e.g., dry rot/water damage in the subfloor). In addition, we wanted to install tile for the flooring and the required wainscot, as well as add new locking storage cabinets to replace the old cabinets. These added costs totaled approximately \$10,000. However, we did not have the estimates available for the March Council meeting and we did not know that the project would exceed the Town Manager's authority of \$15,000. Given the State grant requires the project to be completed by March 31st, staff would not have been able to wait until the Council could consider the item at its April meeting. Staff is seeking Council ratification of the contract with Brownco Construction in an amount not to exceed \$25,000 and will be taking steps to ensure this doesn't happen in the future.

FISCAL IMPACT

This project is budgeted in the F14-15 CIP budget.

ATTACHMENT

Agreement

BCD

BROWNGO CONSTRUCTION & DEVELOPMENT, INC.

CONSTRUCTION AGREEMENT

This CONSTRUCTION AGREEMENT made and entered into on March 18, 2015, by and between BROWNGO CONSTRUCTION & DEVELOPMENT, INC., Contractor License Number 616542, whose business address is 21 Jordan Street, San Rafael, CA 94901, hereinafter referred to as "CONTRACTOR" and Town of Fairfax, whose business address is 142 Bolinas Ave., Fairfax, CA 94930 hereinafter referred to as "OWNER".

TERMS

Scope of Work. Pursuant to the terms and conditions of this Agreement, CONTRACTOR shall perform construction services with regard to the following general work: Said work shall be furnished at 46 Park Rd., Fairfax, CA 94930. Attached as Exhibit "B" to this Agreement is a particularized description of the Scope of Work to be performed by CONTRACTOR.

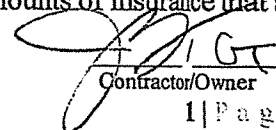
1. **Schedule for the Work.** CONTRACTOR shall perform its work in a timely and expeditious manner. CONTRACTOR shall commence performance of its work upon notification by OWNER. CONTRACTOR shall thereafter diligently and continuously perform the work until final completion. Contractor's work, including site clean-up, shall be finally completed within approximately two (2) weeks of commencement of its work weather permitting.

2. **Compensation.** For the satisfactory performance and completion of Contractor's Work, OWNER shall compensate CONTRACTOR for the Work described in Exhibit "B" of this agreement, for the Contract Price of \$24,427.00 (Twenty Four Thousand Four Hundred Twenty Seven Dollars).

If the Scope of Work includes allowances for portions of the Work, OWNER understands that the allowance amount represents CONTRACTOR's good faith estimate of its costs to complete the work. CONTRACTOR does not guarantee that the allowance work will be completed within the allowance amount. OWNER recognizes that, by agreeing to have work performed pursuant to an allowance, OWNER receives the benefits of CONTRACTOR not including contingencies for its work. OWNER is entitled to all savings under the allowance should CONTRACTOR complete the work for less than the allowance amount. For work performed on a time and material basis under an allowance, or a time and materials change order, or a time and materials contract, Contractor will charge the following: \$45 an hour for carpenters and \$60 an hour for journeyman carpenters, and \$75 an hour for Joe Brown, plus reimbursement of material and subcontractor costs plus a 1.5% General Liability, 5.0% General Conditions and 10% Contractor Fee on total costs.

3. **Payment.** Invoices are due and payable five (5) days from date of invoice. CONTRACTOR will issue invoice for all work performed for project upon completion of project as outlined in Exhibit B to this agreement. Prior to OWNER tendering final payment to CONTRACTOR, CONTRACTOR shall furnish all lien releases and other documents required by OWNER to assure that the work is finally complete.

4. **Insurance.** CONTRACTOR shall be solely responsible for securing adequate insurance with regard to its work. At a minimum, CONTRACTOR shall obtain the types and amounts of insurance that are


Contractor/Owner

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BROWNCO CONSTRUCTION & DEVELOPMENT, INC. specified in Exhibit "C" to this Agreement. CONTRACTOR shall submit Certificates of Insurance evidencing the required insurance within no later than five (5) days of execution of this Agreement.

5. **Standard Terms and Conditions.** CONTRACTOR and OWNER expressly understand and agree that the STANDARD TERMS AND CONDITIONS, attached hereto as Exhibit "A", are an integral portion of the entire agreement between the parties, and they shall apply to Contractor's work as if fully and completely repeated in this Agreement.

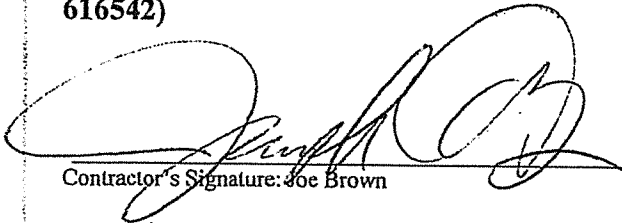
6. **Exhibits.** The Exhibits to this Agreement are as follows:

- Exhibit "A" – Standard Terms and Conditions
- Exhibit "B" – Scope of Work
- Exhibit "C" – Insurance Requirements
- Exhibit "D" – Notice to Owner
- Exhibit "E" – Three Day Right to Cancel
- Exhibit "F" – Notice of Cancellation

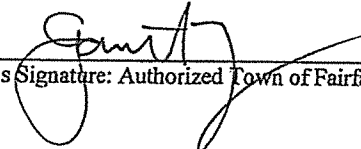
In the event that there is a conflict between the terms of the Standard Terms and Conditions and the remaining exhibits to this Agreement, the Standard Terms shall apply and shall take precedence. Furthermore, the terms of this Construction Agreement shall take precedence over all exhibits in the event of any conflict among the documents.

7. **Entire Agreement.** This Agreement, along with all exhibits hereto, contains the entire agreement between the parties and supersedes and voids all prior proposals, negotiations, arrangements, or agreements with respect to the subject matter of this Agreement. Any and all modifications to this Agreement shall be in writing. Oral modifications shall not be effective.

IT IS SO AGREED: Brownco Construction and Development Inc. (Contractor License Number 616542)


Contractor's Signature: Joe Brown

DATE: 3/18/15


Owner's Signature: Authorized Town of Fairfax Representative

DATE: 3/19/15

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BROWNECO CONSTRUCTION & DEVELOPMENT, INC.

Exhibit "B"

DIVISION 1000 GENERAL REQUIREMENTS

- All permit fees to be paid by others.
- Architectural, engineering fees to be paid for by others.
- Supervision & coordination throughout the project.
- Daily cleanup and weekly off haul of debris is included.

DIVISION 2000 SITE CONSTRUCTION

- Remove floor coverings in the existing restroom.
- Remove the existing cabinets and accessories saving only the grab bars for re-installation.
- Remove the existing paneling where the new tile wainscoting will be installed
- Remove enough of the ceiling paneling to be able to install new lights and fan.
- Remove all existing electrical as need.
- Remove the existing toilet, sink and faucet and save for re-installation.
- Haul away all debris caused by our work.

DIVISION 6000 WOODS AND PLASTICS

- Install backing in the walls for the accessories.
- Patch sub-floor at relocated toilet flange.
- Supply and install new cabinets as per plan with pre-finished maple interiors and laminate doors with locks on each door.
- Re-install paneling on the ceiling and trim on walls where the paneling meets the tile.

DIVISION 8000 DOORS & WINDOWS

- Supply and install a painted plywood panel to cover the inside of the window where the new cabinets will be installed.
- Remove the existing door and frame and re-install with the door swinging out and turn around the door lever.

DIVISION 9000 FINISHES

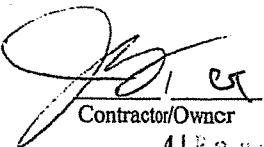
- Supply and install hex tile on the floor and 3 x 6 tile on the walls.
- Prep and seal existing paneling on the walls and ceiling with a clear finish.

DIVISION 10000 SPECIALTIES

- Restroom accessories to be Bobrick. Supply and install (1) one paper towel dispenser, (1) one single roll toilet paper holder, (1) one toilet seat cover holder, (1) sanitary napkin waste container, (1) soap dispenser, (1) one coat hook, and (1) one 24 x 36 framed mirror.
- Re-install the existing set of grab bars.

DIVISION 15000 MECHANICAL

- Relocate the toilet flange to meet the side requirements.
- Re-install the toilet, sink and faucet and tile is completed.
- Duct the new employee restroom fan thru the roof with new roof jack.


Contractor/Owner

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BROWNE CONSTRUCTION & DEVELOPMENT, INC.
Exhibit "A"

STANDARD TERMS & CONDITIONS

I. SCOPE OF WORK

- (a) Contractor's work shall comply with industry standards, all applicable laws and regulatory codes pertaining to the work.
- (b) Contractor is an independent contractor to Owner, and Contractor shall be solely responsible for its means and methods used in connection with the performance of its work. Contractor shall be solely responsible for job-site safety.
- (c) Owner reserves the right to require changes in the scope of work set forth in Exhibit "B" by notifying Contractor in writing of the ordered changes in scope, and Contractor shall thereafter perform the changed work. The parties shall promptly and in good faith attempt to reach agreement concerning the reasonable adjustments, if any, to Contractor's schedule and compensation caused by the ordered change, and, if an agreement is reached, a written amendment to the Agreement will be executed by both parties. Should the parties be unable to agree on a reasonable adjustment to the schedule and compensation caused by the ordered changes, Contractor shall continue to perform both the originally-specified work and the changed work, and Owner will unilaterally adjust the terms of this Agreement in a reasonable manner. In such an event, Contractor shall have the right to compel a further adjustment to the Agreement by asserting a written claim against Owner.
- (d) Upon completion of its work, Contractor shall furnish Owner with accurate record documents, which shall show all as-built conditions for Contractor's work.
- (e) Contractor warrants to Owner that all materials and equipment furnished by Contractor under this Agreement will be new and that all of its Work will be of the specified quality and level of workmanship, free from faults and defects and installed in accordance with the Agreement.
- (f) Contractor shall correct, repair, restore and/or replace all Work that is found to be defective for a period of One (1) Year from the date that Contractor has completed the work or for such longer periods of time specified elsewhere in the Agreement. All warranty work shall be at the sole expense of Contractor and shall be performed in a timely manner at the reasonable convenience of Owner. All warranties shall survive final acceptance of the Work. Contractor's warranty obligations shall not relieve the Contractor from its obligation for latent defects discovered after the warranty period(s) specified in the Agreement.

II. SCHEDULE

- (a) The date specified in the Agreement for completion of the work shall be extended for a period equal to the period of any unanticipated delay that is experienced by Contractor and that is beyond Contractor's reasonable control.

III. INSURANCE / INDEMNIFICATION

- (a) Contractor shall be responsible for securing and maintaining the insurance coverage specified in Exhibit "C" to the Agreement with regard to its work provided hereunder.
- (b) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Owner harmless (including Owner's officers, directors, agents, employees, successors, and assigns) from and against all liability, claims, damages, losses, expenses and costs of any kind or character (including, but not limited to, personal injury, property damage, or economic loss) to the extent caused (i) by any alleged Contractor breach of the Agreement; (ii) by any alleged Contractor error or omission in the performance of its work under the Agreement; or (iii) by any alleged Contractor negligence. With respect to Contractor's defense obligation hereunder, the appointment of counsel to defend Owner shall be subject to the reasonable approval of Owner.

V. TERMINATION

- (a) Owner shall have the right to terminate the Agreement for convenience and without cause. Contractor shall immediately cease performing work upon receipt of Owner's written notice of termination. Contractor shall be compensated for those services properly performed prior to receipt of the notice of termination.

VI. MISCELLANEOUS

- (a) The Agreement shall be governed by the laws of the State of California.
- (b) Contractor shall perform the Work in a safe manner. Contractor agrees that it is solely responsible for the safe performance of its Work.

END OF STANDARD TERMS & CONDITIONS

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BROWNCO CONSTRUCTION & DEVELOPMENT, INC.

DIVISION 16000 ELECTRICAL

- Supply and install all rough and finish materials for the new lights, fan, switches and outlet needed to complete electrical as per plan using existing circuits.

EXCLUSIONS: Any unforeseen or out of level or square conditions that would require additional work to correct, the removal of hazardous materials or anything not specifically mentioned in the above scope of work.

Exhibit "C"

INSURANCE REQUIREMENTS

1. General

Contractor agrees to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement, at its sole cost, all of the insurance required by and described in this Exhibit. All such insurance coverage's shall be written by an admitted insurer in the State of California with a minimum Best Rating of A-, or as otherwise approved by Owner. All of said insurance shall be written for not less than the limits specified herein below, or as required by law, whichever is greater.

2. Minimum Liability Limits

Contractor shall obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of this Agreement, at its sole cost, all of the following insurance:

- (a) **Workers' Compensation** and other benefits as required by law
- (b) **Commercial General** -- Limits equivalent to not less than \$1,000,000.00 combined single limit (Bodily Injury and Property Damage combined).
- (c) **Comprehensive Automobile Liability**, including coverage for all owned, non-owned and hired motor vehicles licensed for highway use. Limits are to be equivalent to not less than \$1,000,000.00 combined single limit (Bodily Injury and Property Damage combined).

3. Endorsements

- (a) Contractor's General Liability shall be endorsed to name Owner as an additional insured under said policies. The additional insured endorsement shall cover all liability arising out of Contractor's work and shall be on ISO Form CG 20 10 07/04, or as otherwise approved by Owner.
- (b) All policies shall be endorsed as follows: "Insurance Company shall notify Owner at least thirty (30) days prior to the effective date of any cancellation or reduction in coverage's in any said policies."

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BROWNCO CONSTRUCTION & DEVELOPMENT, INC.

4. Certificates of Insurance

As evidence of the insurance required herein, and prior to the beginning of any Work, the Contractor shall submit to the Owner certificates of insurance evidencing all of the required coverage and certifying that the insurance policies have been properly endorsed to meet the requirements set forth in these provisions. Contractor agrees to furnish renewal insurance certificates throughout the term of the Agreement.

Exhibit "D"

NOTICE TO OWNER

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California, 95826, 1-800-321-2752.

You, the owner, have the right to require the contractor to have a payment and performance bond. However, the contractor can require you to pay for that bond.

Exhibit "E"

THREE DAY RIGHT TO CANCEL

You, OWNER, have the right to cancel this contract within three business days. You may cancel by emailing, mailing, faxing or delivering a written notice to CONTRACTOR at CONTRACTOR's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, CONTRACTOR must return to you anything you paid within 10 business days of receiving the notice of cancellation. For your part, you must make available to CONTRACTOR at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with CONTRACTOR's instructions on how to return the goods at CONTRACTOR's expense and risk. If you do make the goods available to CONTRACTOR and CONTRACTOR does not pick them up within 20 business days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to CONTRACTOR, or if you agree to return the goods to CONTRACTOR and fail to do so, then you remain liable for performance of all obligations under the contract.

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BROWNCO CONSTRUCTION & DEVELOPMENT, INC.

Exhibit "F"

NOTICE OF CANCELLATION

Date of Transaction (mm/dd/yyyy): _____

Date of Cancellation (mm/dd/yyyy): _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to CONTRACTOR at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of CONTRACTOR regarding the return shipment of goods at CONTRACTOR's expense and risk.

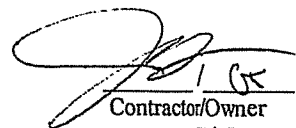
If you do make the goods available to CONTRACTOR and CONTRACTOR does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without further obligation. If you fail to make the goods available to CONTRACTOR, or if you agree to return the goods to CONTRTACTOR and fail to do so, then you remain liable for the performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to: 21 Jordan Street, San Rafael, CA 94901, not later than midnight of date of cancellation (mm/dd/yyyy): _____

I hereby cancel this transaction:

OWNER (SIGN ONLY TO CANCEL)

DATE


Contractor/Owner