

CONSTRUCTION AGREEMENT (MINOR)

[City use: this form is only for public works projects not subject to City Charter public bid requirements.]

(Title of Project)

FY _____ Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

For multi-year contracts or contracts with multiple accounts:

FY _____ Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

FY _____ Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

FY _____ Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

THIS CONSTRUCTION AGREEMENT (“Agreement”) is entered into and effective as of the _____ day of _____ in the year 20____, by and between the City of Petaluma, a
(city use only)
charter city, (“City”) and _____ (“Contractor”) (collectively, “Parties”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete the work as described and/or depicted in **Exhibit A** (“Work”), attached hereto and incorporated by reference herein, upon the terms and conditions set forth herein.

ARTICLE 2. COMPLETION OF WORK

The Work shall be completed to the satisfaction of City by _____, 20_____.

ARTICLE 3. INSURANCE

The applicable insurance requirements, as approved by the City’s Risk Manager, are set forth in **Exhibit B** attached hereto and incorporated by reference herein.

ARTICLE 4. CONTRACT PRICE /PAYMENT

A. City shall pay Contractor the aggregate sum of _____ Dollars (\$_____), for the full and satisfactory completion of the Work in accordance with the terms and conditions of this Agreement (“Contract Price”).

B. Payment schedule:

1. Such compensation shall be paid by City within thirty (30) days following written notice of City’s acceptance of the Work.
2. Such compensation shall be paid by City in accordance with the Payment Schedule attached hereto as **Exhibit C** and incorporated by reference herein.

[City use: check one, and attach Payment Schedule as Exhibit C if applicable.]

- C. Notwithstanding any provisions herein, Contractor shall not be paid any compensation until such time as Contractor has on file with the City Finance Department a current W-9 form available from the IRS website (www.irs.gov) and has obtained a currently valid Petaluma business license pursuant to the Petaluma Municipal Code.

ARTICLE 5. BONDS/CONTRACTOR'S GUARANTEE

- A. A labor and materials (payment) bond is **required** / **not required** for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Contract Price, and which conforms with the requirements of Civil Code section 3248, as may be amended from time to time.
- B. A performance bond is **required** / **not required** for this Agreement. If required for this Agreement, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Contract Price to guarantee faithful performance of the Work.
- C. Contractor shall guarantee the Work to be free of defects in material and workmanship for a period of one (1) year following the City's acceptance of the Work ("Contractor's Guarantee"). As part of Contractor's Guarantee, Contractor agrees to make, at Contractor's own expense, any repairs or replacements made necessary by defects in material or workmanship which become evident within the one-year guarantee period. The Contractor's Guarantee is effective regardless of whether or not a maintenance bond is required by the City for this Agreement.
- D. A maintenance bond is **required** / **not required** for this Agreement. If required for this Agreement, prior to acceptance of the Work, Contractor shall provide a maintenance bond in the amount of ten percent (10%) of the Contract Price as a security for the Contractor's Guarantee. The maintenance bond shall remain in force for one (1) year following the City's acceptance of the Work.
- E. Any and all bonds required for this Agreement shall be in a form acceptable to the City Attorney. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein.

ARTICLE 6. CONTRACT DOCUMENTS

The contract documents which comprise the entire agreement between City and Contractor consist of this Agreement and exhibits thereto and the following ("Contract Documents"):

- City-approved drawings and specifications for the Work;
- Any written amendment or change order approved by the City after the effective date of this Agreement;
- Any bonds required pursuant to Article 5 of this Agreement;
- **Other:** _____

The terms and conditions of this Agreement and any City-prepared exhibits take precedence over any conflicting or inconsistent terms or conditions in any other exhibits hereto. The Contract Documents may only be amended by prior written authorization of the City Manager or his/her designee.

ARTICLE 7. LIQUIDATED DAMAGES

- A. City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2 herein, plus any extensions previously authorized in writing by the City Manager or his/her designee. It is and will be difficult and/or impossible to ascertain and determine the actual damage which City will sustain in the event of and by reason of Contractor's failure to fully perform the Work or to fully perform all of its contract obligations that have accrued by the time for completion as specified in Article 2 herein and/or as specified for completion of any scheduled operations or works described in the Contract Documents. It is agreed in accordance with California Government Code Section 53069.85 and Public Contract Code Section 7203, as may be amended from time to time, that Contractor will forfeit and pay to City liquidated damages in the sum of _____ Dollars (\$_____) per day for each and every calendar day that expires after the time for completion specified in Article 2 herein and/or as specified for completion of any scheduled operations or works described in the Contract Documents except as otherwise provided by extension of time previously authorized in writing by the City Manager or his/her designee. It is further understood and agreed in accordance with California Government Code Section 53069.85 that the liquidated damages sum specified in this provision is not manifestly unreasonable under the circumstances existing at the time this contract was made, and that City may deduct liquidated damages sums in accordance with this provision from any payments due or that may become due to Contractor.
- B. Liquidated damages will continue to accrue at the stated rate until final completion of the Work. Accrued liquidated damages may be deducted by City from amounts due or that become due to Contractor for performance of the Work. Liquidated damages may not be waived or reduced by City unless expressly waived or reduced in writing by the City Manager or his/her designee.

ARTICLE 8. PREVAILING WAGES

- A. Pursuant to California Labor Code Section 1771, Contractor and any subcontractor shall pay all workers employed in execution of the Work in accordance with the general rate of per diem wages specified for each craft, classification, or type of worker needed to execute the Work. Copies of the prevailing rates of per diem wages are on file at the City Clerk's office, and shall be made available to any interested party on request.
- B. Contractor is required to pay all applicable penalties and back wages in the event of violation of prevailing wage law, and Contractor and any subcontractor shall fully comply with California Labor Code Section 1775, which is incorporated by this reference as though fully set forth herein.

- C. Contractor and any subcontractor shall maintain and make available for inspection payroll records as required by California Labor Code Section 1776, which is incorporated by this reference as though fully set forth herein. In addition, Contractor and subcontractor shall be required to be registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. Contractor and any subcontractor shall submit certified payroll records to the Department of Industrial Relations Labor Commissioner online:
<http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>. Contractor is responsible for ensuring compliance with this section.
- D. Contractor and any subcontractor shall fully comply with California Labor Code Section 1777.5, concerning apprentices, which is incorporated by this reference as though fully set forth herein. Contractor is responsible for ensuring compliance with this section.
- E. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Work shall constitute a legal day's work under this Agreement. Contractor and any subcontractor shall pay workers overtime pay as required by California Labor Code Section 1815. Contractor and any subcontractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation so the provisions of Article 3 of Chapter 1 of Part 7, Division 2 of the California Labor Code, which is incorporated by this reference as though fully set forth herein.
- F. Pursuant to California Labor Code Section 1771.4, this project is subject to compliance monitoring and enforcement by the Department of Labor Relations. Contractor is required to post all jobsite notices as required by regulation.

ARTICLE 9. INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, City and its officers, officials, employees, agents and volunteers from and against any and all alleged liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Work or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the active negligence, sole negligence or willful misconduct of the City. Pursuant to California Public Contract Code Section 9201, City shall timely notify Contractor of receipt of any third-party claim relating to this Agreement.

The Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. 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.

ARTICLE 10. DISCLAIMER CONCERNING LABOR CODE SECTION 6400

Contractor understands and agrees that with respect to performance of the Work, and notwithstanding any provision in this Agreement to the contrary, Contractor, and/or its privities,

including, without limitation, subcontractors, suppliers and other engaged by Contractor in the performance of the Work shall be “employers” for purposes of California Labor Code Section 6400 and related provisions of law, and that neither City nor its officials, officers, employees, agents, volunteers or consultants shall be “employers” pursuant to California Labor Code Section 6400.

ARTICLE 11. TERMINATION

Notwithstanding any other provision set forth herein, City may terminate or suspend this Agreement immediately for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Contractor, including, without limitation, a breach of any of Contractor’s covenants, representations or guarantees provided herein. Upon receipt of notice of termination or suspension, Contractor shall immediately stop all work in progress under this Agreement. Without limiting the generality of the foregoing, City may terminate this Agreement if Contractor fails to perform the Work within the time specified in Article 2, or any written extension thereof. If City terminates this Agreement for cause, City may undertake to have the Work completed by its own workforce or by substitution of contractor, and Contractor shall be liable to City for any excess cost incurred by City as a result. In the event of such termination, Contractor shall be entitled to payment for all Work performed to date of termination to the extent such services were actually performed in accordance with this Agreement. Upon termination, any and all of City’s documents or materials provided to Contractor and any and all of Contractor’s documents and materials prepared for or relating to this Agreement shall be delivered to the City as soon as possible, but not later than ten (10) days after the cessation of the Work.

ARTICLE 12. CONTRACTOR CLAIMS

Contractor claims shall be submitted in writing in the manner specified in Public Contract Code Section 9204, which is incorporated by this reference as though fully set forth herein, and shall include the documentation necessary to substantiate the claim. Claims of Three Hundred Seventy-five Thousand Dollars (\$375,000) or less must be filed before the date of final payment, and in compliance with California Public Contract Code Sections 20104 et seq.

ARTICLE 13. INDEPENDENT CONTRACTOR

It is understood and agreed that in the performance of this Agreement, Contractor (including its employees and agents) is acting in the capacity of an independent contractor, and not as an agent or employee of the City. Contractor has full control over the means and methods of performing said services and is solely responsible for its acts and omissions, including the acts and omissions of its employees and agents.

ARTICLE 14. LICENSES/PERMITS

Contractor represents that Contractor has all licenses, permits, or qualifications of whatsoever in nature, which are legally required for Contractor to perform the Work. Contractor shall, at Contractor’s sole cost and expense, keep in effect at all times during the term of this Agreement, any such licenses, permits or qualifications. **Contractor is required to possess a current _____ license.**

ARTICLE 15. INSPECTION

All Work done and materials furnished, if any, shall be subject to inspection and approval by the City.

ARTICLE 16. SUBCONTRACTORS

Contractor must obtain the City’s prior written consent for subcontracting any Work pursuant to this Agreement. Any such subcontractor shall comply, to the extent applicable, with the terms and conditions of this Agreement. Any agreement between Contractor and a subcontractor pursuant to this Agreement shall provide that the subcontractor procure and maintain insurance coverage as required herein and which shall name City as an additional insured.

ARTICLE 17. COMPLIANCE WITH LAWS/NON-DISCRIMINATION

Contractor shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Contractor shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

ARTICLE 18. NOTICES

All notices required or permitted by this Agreement, including notice of change of address, shall be in writing and given by personal delivery or sent postage prepaid and addressed to the parties intended to be notified, as set forth herein. Notice shall be deemed given as of the date of delivery in person or as of the date deposited in any post office or post office box regularly maintained by the United States Postal Service, unless otherwise stated herein. Notice shall be given as follows:

City: City Clerk
City of Petaluma
Post Office Box 61
Petaluma, California 94953
Telephone: (707) 778-4360

Contractor: _____
(Contact Name)

(Business Name)

(Address)

(City, State, Zip)

(Telephone)

(E-mail)

ARTICLE 19. GOVERNING LAW/VENUE

This Agreement shall be construed and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the County of Sonoma.

ARTICLE 20. NON-WAIVER

The City’s failure to enforce any provision of this Agreement or the waiver of any provision in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

ARTICLE 21. THIRD PARTY BENEFICIARIES

The Parties 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.

ARTICLE 22. ASSIGNMENT

No assignment in transfer in whole or in part of this Agreement shall be made without the prior written consent of City.

ARTICLE 23. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise enforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

ARTICLE 24. HEADINGS

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

IN WITNESS WHEREOF, City and Contractor have caused this Agreement to be executed the day and year first above written.

CITY OF PETALUMA

CONTRACTOR _____

City Manager

By _____

ATTEST:

Title

City Clerk

License Number

Taxpayer I.D. Number

APPROVED AS TO FORM:

City Attorney

Petaluma Business Tax Certificate Number

file name:

EXHIBIT B
INSURANCE REQUIREMENTS
FOR ALL AGREEMENTS

Contractor's performance of the Services under this Agreement shall not commence until Contractor shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the City Attorney as to form and the Risk Manager as to carrier and sufficiency. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Contractor shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Contractor, the Contractor's agents, representatives, employees and subcontractors.

A. Required Minimum Scope of Insurance

- Coverage shall be at least as broad as:
Insurance Services Office Commercial General Liability coverage:
 - a. Personal injury;
 - b. Contractual liability.
- Insurance Services Office form covering Automobile Liability (any auto), if no company owned autos, non-owned and hired auto applies.
- Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Professional Liability/Errors and Omissions
- Crime/Employee Blanket Fidelity Bond
- Property Insurance against all risks of loss to any tenant improvements or betterments.
- Pollution Liability Insurance
- Garage Liability
- Garagekeepers Insurance
- Technology Professional Liability Errors and Omissions Insurance (IT Consultant)/Cyber Liability
- Abuse or Molestation Liability Coverage

A.1 Required for All Contracts

- Policy Endorsements or Excerpts from the Policy Pursuant to Section D
- Copy of the Declarations and Policy Endorsements Page for the CGL Policy

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- Products/Completed Operations: \$1,000,000 per occurrence/aggregate.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.

Bodily Injury by Disease - \$1,000,000 policy limit.

Bodily Injury by Disease - \$1,000,000 each employee.

- Professional Liability/Errors and Omissions: \$1,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.
 - Crime/Employee Blanket Fidelity Bond - \$1,000,000: Contractor, at its own cost and expense, must maintain a Crime/Employee Blanket Fidelity Bond in the amount of \$1,000,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).
 - All Risk Property Insurance: Full replacement cost.
 - Pollution legal liability with limits no less than \$1,000,000 per occurrence or claim and \$2,000,000 policy aggregate. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.
 - Garage Liability: \$1,000,000 per occurrence.
 - Garagekeepers Insurance: \$1,000,000 per occurrence.
 - Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
1. The Policy shall include, or be endorsed to include, **property damage liability coverage** for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of the Consultant. If not covered under the Consultant's liability policy, such "property" coverage of the City may be endorsed onto the Consultant's Cyber Liability as covered property as follows:
 2. **Cyber Liability coverage** in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of the Consultant.
 3. The Insurance obligations under this agreement shall be the greater of 1) all the Insurance coverage and limits carried by or available to the Consultant; or 2) the minimum Insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of the Consultant under this agreement.
- Abuse or Molestation Liability Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. 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 (Contractor) or the City.

City reserves the right to review any and all of the required insurance policies, declaration pages, and/or endorsements, but has no obligation to do so. City's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or City's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

D. Other Insurance Provisions

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. **Additional Insured:** The City, its officers, officials, employees, agents and volunteers are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
2. **Primary and Non-Contributory:** For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. **Waiver of Subrogation:** Consultant agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the Services to do likewise.
7. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement 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.

8. 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 non-contributory basis for the benefit of the City of Petaluma before the City of Petaluma's own insurance or self-insurance shall be called upon to protect it as a named insured.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

F. Verification of Coverage

NOTE: The City of Petaluma is now using an online insurance program, PINS Advantage. Once you have been awarded a contract with the City of Petaluma, you will receive an e-mail from PINS Advantage/City of Petaluma requesting that you forward the e-mail to your insurance agent(s). Consultant shall furnish the City with Certificate of Insurance along with Declarations and Endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before the Services commence.