

**SERVICES CONTRACT
BY AND BETWEEN
THE CITY OF SAN RAFAEL
AND
CONTRACTOR'S NAME
FOR PROJECT**

This contract ("Contract") is entered into by and between the City of San Rafael ("City") and [redacted] ("Contractor"), a [redacted] <insert type of business entity>, for work on the City's [redacted] ("Project"), and is effective on _____ ("Effective Date").

The parties agree as follows:

1. Scope of Work. Contractor will perform and provide all labor, materials, equipment, supplies, transportation, and any and all other items or services necessary to perform and complete the work required for the Project ("Work"), as specified in **Exhibit A, Scope of Work and Bid Proposal**, and according to the terms and conditions of this Contract, including all attachments to the Contract and any other documents and statutes incorporated by reference. To the extent that any attachment contains provisions that conflict or are inconsistent with the terms set forth in the body of this Contract, the Contract terms will control.

2. Contract Documents. The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below:

- 2.1** Contract;
- 2.2** Addenda, if any;
- 2.3** Exhibit A – Scope of Work and Bid Proposal;
- 2.4** Exhibit B – Insurance Requirements.

3. Contract Price. As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor a not to exceed amount of \$ [redacted] (the "Contract Price"), for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, and all overhead costs, in accordance with Contractor's Bid Proposal set forth in **Exhibit A** and the payment provisions contained herein.

3.1 Payment. Contractor will bill City on a monthly basis for Services provided by Contractor during the preceding month, subject to verification by City. City will pay Contractor within thirty (30) days of City's receipt of invoice.

4. Term of Agreement. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on insert end date.

5. Standard of Care. All Work must be provided in a manner that meets or exceeds the standard of care applicable to the same type of work in the City of San Rafael. Contractor must promptly correct, at Contractor's sole expense, any Work that the City determines is deficient or defective.

6. Permits and Licenses. Contractor, at its sole expense, must obtain and maintain during the term of this Contract, all appropriate permits, certificates and licenses including, but not limited to a City business license.

7. Indemnification. Contractor will indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, City, its governing body, officers, agents, employees, and volunteers (the "Indemnitees") from and against any and all liability, demands, loss, damage, claims,

settlements, expenses, and costs (including, without limitation, attorneys' fees, expert witness fees, and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, subcontractors, representatives, or agents in performing the Work or failing to comply with any obligation of Contractor under this Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by insurance coverage limits, and will survive the expiration or early termination of this Contract.

8. Insurance. Contractor will, at all times under this Contract, procure and maintain in full force and effect the insurance coverage provided in **Exhibit B, Insurance Requirements**, at no cost to City.

9. Termination.

9.1 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must: immediately stop the Work, including under any terms or conditions that may be specified in the notice; comply with City's instructions to protect the completed Work and materials; and use its best efforts to minimize further costs. In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. If City terminates the Contract for convenience, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination, as well as five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less, which is deemed to cover all overhead and profit to date.

9.2 Termination for Default. The City may terminate this Contract for cause for any material default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; lack of financial capacity to complete the Work within the Contract Time; or responsibility for any other material breach of the Contract requirements. If City terminates the Contract for cause, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination.

10. Dispute Resolution. Any dispute arising under or related to this Contract is subject to the dispute resolution procedures of Public Contract Code sections 9401 and 20104 et. seq., which are incorporated by reference.

11. Waiver. A waiver by City of any breach of any term, covenant, or condition in this Contract will not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, regardless of the character of any such breach.

12. Warranty. Contractor guarantees and warrants the Work and the materials used or provided for the Project for a period of one year, beginning upon City's acceptance of the Work for the Project as complete ("Warranty Period"). During the Warranty Period, upon notice from the City of any defect in the Work or the materials, Contractor must, at its sole expense, promptly repair or replace the defective Work or materials, including repair or replacement of any other Work or materials that is or are displaced or damaged during the warranty work, excepting any damage resulting from ordinary wear and tear.

13. Worksite Conditions.

13.1 Clean and Safe. Contractor must maintain the Work site and staging and storage areas in a clean and neat condition and must ensure it is safe and secure. On a daily basis Contractor must remove and properly dispose of debris and waste materials from the Work site.

13.2 Inspection. Contractor will make the Work accessible at all times for inspection by the City.

13.3 Hazardous Materials. Unless otherwise specified in the Contract documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other hazardous materials, as identified by any federal, state, or local law or regulation. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other hazardous materials, and the asbestos or other hazardous materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease Work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other hazardous materials may be used in performance of the Work.

14. Conflicts of Interest. Contractor, its employees, subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code section 1090 et seq. and under the Political Reform Act as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

15. Non-Discrimination. No discrimination will be made in the employment of persons under this Contract because of the race, color, national origin, ancestry, religion, gender or sexual orientation of such person.

16. Independent Contractor. City and Contractor intend that Contractor will perform the Work under this Contract as an independent contractor. Contractor is solely responsible for its means and methods in performing the Work. Contractor is not an employee of City and is not entitled to participate in health, retirement or any other employee benefits from City.

17. Assignment of Unfair Business Practice Claims. Under Public Contract Code section 7103.5, Contractor and its subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders final payment to Contractor, without further acknowledgement by the parties.

18. Notice. Any notice, billing, or payment required by or pursuant to the Contract documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

To **CITY's** Representative:

To **CONTRACTOR's** Representative:

Name
Title of City's Project Manager
1400 Fifth Avenue
San Rafael, CA 94901

Name
Title of Contractor's Project Director
insert mailing address
insert mailing address

19. General Provisions.

19.1 Compliance with All Laws. Contractor will comply with all applicable federal, state, and local laws and regulations including, but not limited to, unemployment insurance benefits, FICA laws, conflict of interest laws, and local ordinances. Work may only be performed by qualified and experienced workers who are not employed by the City and who do not have any contractual relationship with City, with the exception of this Contract.

19.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract is deemed to be inserted, and the Contract will be construed and enforced as though such

provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract will be deemed amended accordingly.

19.3 Assignment and Successors. Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

19.4 Third Party Beneficiaries. There are no intended third-party beneficiaries to this Contract.

19.5 Governing Law and Venue. This Contract will be governed by California law and venue will be in the Superior Court of Marin County, and no other place.

19.6 Amendment. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

19.7 Integration; Severability. This Contract and the Contract documents incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract documents will remain in full force and effect.

19.8 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

19.9 Counterparts and Electronic Signature. This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY OF SAN RAFAEL:

CONTRACTOR:

CRISTINE ALILOVICH, City Manager

By: _____

APPROVED AS TO FORM:
Office of the City Attorney

Name: _____

Title: _____

By: GENEVIEVE COYLE,
Assistant City Attorney

By: _____

ATTEST:
City Clerk

Name: _____

Title: _____

LINDSAY LARA, City Clerk

Contractor's California License Number(s) and
Expiration Date(s) (required under Section 1 of the
Contract):

Exhibit A: Scope of Work and Bid Proposal
Exhibit B: Insurance Requirements

Exhibit A
SCOPE OF WORK AND BID PROPOSAL

The Work to be performed by **CONTRACTOR** under this Agreement is more fully described in **CONTRACTOR's** bid proposal, which is attached to this Exhibit A.

Exhibit B
INSURANCE REQUIREMENTS

Contractor will, at all times under this Contract, procure and maintain in full force and effect the insurance coverage required in this Exhibit B to cover the activities of Contractor and any subcontractors relating to or arising from performance of the Work. Each policy must be issued by a company licensed to do business in California, and with a strength and size rating from A.M. Best Company of A-VIII or better. Contractor must provide City with certificates of insurance and required endorsements as evidence of coverage with the executed Contract, or through the PINSAdvantage website <https://www.pinsadvantage.com/> upon request by the City, and before the City authorizes Contractor to proceed with the Work.

1. Workers' Compensation. Statutory coverage is required by the California Workers' Compensation Insurance and Safety Act. If Contractor is self-insured, it must provide its duly authorized Certificate of Permission to Self-Insure. In addition, Contractor must provide employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

2. Liability. Commercial General Liability ("CGL") insurance issued on an occurrence basis, including coverage for liability arising from Contractor's or its subcontractor's acts or omissions in performing the Work, including Contractor's protected coverage, blanket contractual, products and completed operations, broad form property damage, vehicular coverage, and employer's non-ownership liability coverage, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate.

3. Automotive. Commercial automotive liability coverage for owned, non-owned and hired vehicles must provide coverage of at least \$1,000,000 combined single limit per accident for bodily injury, death, or property damage.

4. Subrogation Waiver. Each required policy must include an endorsement that the insurer waives any right of subrogation it may have against the City or the City's insurers.

5. Required Endorsements. The CGL policy and the automotive liability policy must include the following specific endorsements:

(a) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract.

(b) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) The insurance provided is primary and no insurance held or owned by City may be called upon to contribute to a loss ("primary and non-contributory").

(d) Any umbrella or excess insurance must contain or be endorsed to contain a provision that such coverage will also apply on a primary or non-contributory basis for the benefit of City before the City's own insurance or self-insurance will be called upon to protect it as a named insured.

(e) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.