

SAMPLE AGREEMENT

City of San Rafael ♦ California

Agreement for Informal Bids

CITY OF SAN RAFAEL COMMUNITY CENTER ADA BATHROOMS

This Agreement is made and entered into this ____ day of _____, 2019 by and between the City of San Rafael (hereinafter called City) and _____ (hereinafter called Contractor). Witnesseth, that the City and the Contractor, for the considerations hereinafter named, agree as follows:

1. Scope of the Work.

The Contractor hereby agrees to furnish all of the materials, equipment, and labor necessary to perform the work for the project entitled “**City of San Rafael Community Center ADA Bathrooms**”, all in accordance with the requirements and provisions of the **SKS Architects plans and specifications**.

2. Prevailing Wages.

Pursuant to the requirements of California Labor Code Section 1771, and San Rafael Municipal Code Section 11.50.180 (C), the general prevailing wage in the locality in which the work is to be performed, for each craft or type of worker needed to execute the contract, shall be followed.

3. Bonds.

The Contractor shall provide and maintain during the course of the project, a Payment Bond and a Faithful Performance Bond issued by a surety admitted in California, to cover the work under this Agreement, both in the amount of \$_____. The Payment Bond shall comply with the requirements of California Civil Code sections 9550 through 9554. Both the Faithful Performance and Payment Bonds shall contain a provision for the surety’s waiver notice of any changes to the contract underlying the bond.

4. Time of Completion.

- (a) The work to be performed under this Contract shall be commenced within **Five (5) Working Days** after the date of written notice by the City to the Contractor to proceed.
- (b) All work, including punchlist items, shall be completed within **23 Working Days**, and with such reasonable extensions of time as may be requested by Contractor and approved by City.

5. Liquidated Damages.

It is agreed that, if all the work required by the contract is not finished or completed within the number of working days as set forth in the contract, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City, the sum of **\$500** for each and every working day’s delay in finishing the work in excess of the number of working days prescribed above; and the Contractor agrees to pay said liquidated damages herein provided for, and further agrees that the City may deduct the amount thereof from any moneys due or that may become due the Contractor under the contract.

6. The Contract Sum.

The City shall pay to the Contractor for the performance of the Contract the amounts determined for the total number of each of the units for work in the following schedule completed at the unit price stated. The number of units contained in this schedule is approximately only, and the final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the Contract, provided that the total compensation under this Contract shall not exceed \$_____ unless a written amendment is executed by the City and the Contractor.

BID ITEMS

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| ITEM | DESCRIPTION | ESTIMATED QUANTITY | UNIT | UNIT PRICE | TOTAL PRICE |
|------|---|--------------------|------|------------|-------------|
| 1. | ADA Bathroom renovation per plans and specs | 1 | LS @ | \$ = | \$ |

GRAND TOTAL BID \$ _____.

7. Progress Payments.

- (a) On not later than the 6th day of every month the Public Works Department shall prepare and submit an estimate covering the total quantities under each item of work that have been completed from the start of the job up to and including the 25th day of the preceding month, and the value of the work so completed determined in accordance with the schedule of unit prices for such items together with such supporting evidence as may be required by the City and/or Contractor .
- (b) As soon as possible after the preparation of the estimate, the City shall, after deducting previous payments made, pay to the Contractor 95% of the amount of the estimate as approved by the Public Works Department.
- (c) The Contractor may elect to receive 100% of payments due under the contract from time to time, without retention of any portion of the payment by the public agency, by depositing securities of equivalent value with the public agency in accordance with the provisions of Section 22300 of the Public Contract Code. Such securities, if deposited by the Contractor, shall be valued by the City’s Finance Director, whose decision on valuation of the securities shall be final.

8. Acceptance and Final Payment.

- (a) Upon receipt of written notice that the work is ready for final inspection and acceptance, the Engineer shall within 5 days make such inspection, and when he finds the work acceptable under the Contract and the Contract fully performed, he will promptly issue a Notice of Completion, over his own signature, stating that the work required by this Contract has been completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the Contractor, shall be paid to the Contractor by the City as soon as possible,
- (b) Before final payment is due the Contractor shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with work have been paid, except that in case of disputed indebtedness or liens the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.
- (c) The making and acceptance of the final payment shall constitute a waiver of all claims by the City, other than those arising from any of the following: (1) unsettled liens; (2) faulty work appearing within 12 months after final payment; (3) requirements of the specifications; or (4) manufacturers’ guarantees. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9. 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.

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3. If it employs any person, Contractor shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.. 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. The insurance policies shall be specifically endorsed to include the City, its officers, agents, employees, and volunteers, as additional insureds under the policies. Additionally, the insurance policies shall be specifically endorsed to include Alten Construction, Inc. as additional insured under the policies.
2. The additional insured coverage under Contractor's insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by City and shall not call upon City 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. The insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.
4. By execution of this Contract, Contractor hereby grants to City a waiver of any right to subrogation which any insurer of Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.
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 City, 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 City 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

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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 City.

10. Indemnification.

- (a) 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) 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.

11. 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.

12. 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.

13. 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.

14. 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: Public Works Director
 City of San Rafael
 111 Morpew Street
 San Rafael, CA 94901

To Contractor: CONTRACTOR'S NAME &
 ADDRESS

15. Independent Contractor.

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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.

16. 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.

17. 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.

18. 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).

19. Warranty.

- (a) Except as otherwise expressly provided in the Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by City, Contractor warrants and guarantees all work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the work, or otherwise provided as a part of the work pursuant to the Agreement, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire work by the City. Contractor shall repair or replace all work or material, together with any other work or material that may be displaced or damaged in so doing, that may prove defective in workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to City.
- (b) In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of City.
- (c) In addition to the above, the Contractor shall make a written assignment of any applicable manufacturers' and other product warranties to the City, prior to completion and final acceptance of the work by City.

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IN WITNESS WHEREOF, City and Contractor have caused their authorized representatives to execute this Agreement the day and year first written above.

CITY OF SAN RAFAEL:

Jim Schutz
City Manager

ATTEST:

**Contractor
By:**

Lindsay Lara
City Clerk

Printed Name:

APPROVED AS TO FORM:

**Contractor
By:**

Robert F. Epstein
City Attorney

Printed Name:

File No.: