

**AGREEMENT FOR THE CONSTRUCTION OF**

**PROJECT NAME**

THIS AGREEMENT, made and concluded, in duplicate, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, between the SAN RAFAEL SANITATION DISTRICT ("Owner"), a public entity in Marin County, and \_\_\_\_\_ ("Contractor"), License No. \_\_\_\_\_.

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

W I T N E S S E T H

1. That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, and under the conditions expressed in the two bonds, bearing even date with these presents, and hereunto annexed, the Contractor agrees with the Owner, at his/her own proper cost and expense, to do all the work and furnish all the materials necessary to construct and complete in good workmanlike and substantial manner the project entitled: **Project Name**, in strict conformity with the plans and specifications prepared therefor, which said plans and specifications are hereby specially referred to and by said reference made a part hereof.
  
2. Now, therefore, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to complete the work in accordance with the terms and conditions stipulated in the Contract Documents for the sum of \_\_\_\_\_  
(\$ \_\_\_\_\_) computed in accordance with Contractor's accepted proposal dated \_\_\_\_\_, 20\_\_, which accepted proposal is incorporated herein by reference thereto as if herein fully set forth. Compensation shall be based upon any lump sum bid items plus the unit prices stated in the Bid Schedule times the actual quantities or units of work and materials performed or furnished. The further terms, conditions, and covenants of this Agreement are set forth in the Contract Documents, each of which is by this reference made a part hereof. Payments are to be made to the Contractor in accordance with the provisions of the Contract Documents and the Technical Specifications in legally executed and regularly issued warrants of the Owner, drawn on the appropriate fund or funds as required by law and order of the Owner thereof.
  
3. The Owner hereby promises and agrees with the said Contractor to employ, and does hereby employ, the said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.
  
4. The Contractor and any subcontractor performing or contracting any work shall comply

with all applicable provisions of the California Labor Code for all workers, laborers and mechanics of all crafts, classifications or types, including, but necessarily limited to the following:

(a) 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 (not less than 1 1/2 times the base rate of pay) as required by California Labor Code Section 1815. Contractor and any subcontractor shall, as a penalty to the District, 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.

(b) Pursuant to the provisions of California Labor Code, Sections 1770 et. seq., the Contractor and any subcontractor under him shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Pursuant to the provisions of California Labor Code Section 1773.2, the Contractor is hereby advised that copies of the prevailing rate of per diem wages and a general prevailing rate for holidays, Saturdays and Sundays and overtime work in the locality in which the work is to be performed for each craft, classification, or type of worker required to execute the Contract, are on file in the office of the District Secretary, which copies shall be made available to any interested party on request. The Contractor shall post a copy of said prevailing rate of per diem wages at each job site.

(c) As required by Section 1773.1 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.

(d) To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within ten (10) days after their execution and thereafter shall establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids.

(e) The Contractor shall comply with the provisions of Section 1775 of the California Labor Code and shall, as a penalty to the Owner, forfeit up to fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages for each craft, classification, or type of worker needed to execute the contract. The Contractor shall pay each worker an amount equal to the difference between the prevailing wage rates and the amount paid worker for each calendar day or portion thereof for which a worker was paid less than the prevailing wage rate. 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.

(f) 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. Contractor is responsible for ensuring compliance with this section. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the **Project Name**. Said payroll shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in Paragraph 4(f), herein, shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in Paragraph 4(f), herein, shall be made available upon request by the public for inspection or for copies thereof; provided, however, that a request by the public shall be made through either the Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to subparagraph 4(f)(2) herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal offices of the Contractor.

The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

Each Contractor shall file a certified copy of the records, enumerated in Paragraph 4(f) with the entity that requested the records within ten (10) days after receipt of a written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Owner, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated. The Contractor shall inform the Owner of the location of the records enumerated under Paragraph 4(f) including the street address, city, and county, and shall, within 5 working days, provide a notice of change of location and address. The Contractor shall have ten (10) days in which to comply subsequent to receipt of

written notice specifying in what respects the Contractor must comply with this Paragraph 4(f). In the event that the Contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or the Owner, forfeit \$25.00 dollars for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Responsibility for compliance with Paragraph 4(f) lies with the Contractor.

(g) The Contractor and any subcontractors shall, when they employ any person in any apprenticeable craft or trade, apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the construction site for a certificate approving the Contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected; and shall comply with all other requirements of Section 1777.5 of the California Labor Code, which is incorporated by this reference as though fully set forth herein. The responsibility of compliance with California Labor Code Section 1777.5 during the performance of this contract rests with the Contractor. Pursuant to California Labor Code Section 1777.7, in the event the Contractor willfully fails to comply with the provisions of California Labor Code Section 1777.5, the Contractor shall be denied the right to bid on any public works contract for up to three (3) years from the date noncompliance is determined and be assessed civil penalties.

(h) In accordance with the provisions of Article 5, Chapter 1, Part 7, Division 2 (commencing with Section 1860), and Chapter 4, Part 1, Division 4 (commencing with Section 3700) of the California Labor Code, the Contractor is required to secure the payment of compensation to its employees and for that purpose obtain and keep in effect adequate Workers' Compensation Insurance and Employers Liability Insurance. If the Contractor, in the sole discretion of the Owner satisfies the Owner of the responsibility and capacity under the applicable Workers' Compensation Laws, if any, to act as self-insurer, the Contractor may so act, and in such case, the insurance required by this paragraph need not be provided.

The Contractor is advised of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and shall comply with such provisions and have Employer's General Liability limits of \$1,000,000 per accident before commencing the performance of the work of this Contract.

The Notice to Proceed with the Work under this Contract will not be issued, and the Contractor shall not commence work, until the Contractor submits written evidence that it has obtained full Workers' Compensation Insurance coverage for all persons whom it employs or may employ in carrying out the work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable state Workers' Compensation Insurance Laws. In accordance with the provisions of Section 1861 of the California Labor Code, the Contractor in signing this agreement certifies to the Owner as true the following statement: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions

of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

A subcontractor is not allowed to commence work on the project until verification of Workers' Compensation Insurance coverage has been obtained and verified by the Contractor and submitted to the Construction Manager for the Owner's review and records.

(i) In accordance with the provisions of Section 1727 of the California Labor Code, the Owner, before making payment to the Contractor of money due under a contract for public works, shall withhold and retain therefrom all wages and penalties which have been forfeited pursuant to any stipulation in the contract, and the terms of Chapter 1, Part 7, Division 2 of the California Labor Code (commencing with Section 1720). But no sum shall be withheld, retained, or forfeited, except from the final payment, without a full investigation by either the Division of Labor Standards Enforcement or by the Owner.

5. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this Agreement the instrument and the bid proposal of said Contractor, then this Agreement instrument shall control, and nothing herein contained shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

6. The Contractor agrees to provide and maintain insurance coverage, and to indemnify and save harmless the parties named and, in the manner, set forth in Section 00800-2.0, **LIABILITY AND INSURANCE**, of the Supplementary General Conditions of the Specifications.

The duty of Contractor to indemnify and save harmless, as set forth herein, shall include a duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein shall be construed to require Contractor to indemnify against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

7. The Contractor shall diligently prosecute the work so that it shall be substantially completed within the time specified in Section 00800-1.1, **Time Allowed for Completion**.

8. Except as otherwise may be provided herein, Contractor hereby expressly guarantees for one (1) full year from the date of acceptance of the Work under this agreement thereof by the Owner, to repair or replace any part of the work performed hereunder which constitutes a defect resulting from the use of inferior or defective materials, equipment or workmanship. If, within said period, any repairs or replacements in connection with the work are, in the opinion of the Owner, rendered necessary as the result of the use of inferior or defective materials, equipment or workmanship, Contractor agrees, upon receipt of notice from Owner, and without expense to Owner, to promptly repair or replace such material or workmanship and/or correct any and all defects therein. If Contractor, after such notice, fails to proceed promptly to comply with the terms of this guarantee, Owner may perform the work necessary to effectuate such correction and recover the cost thereof from the Contractor and/or its sureties.

In special circumstances where a particular item of work or equipment is placed in continuous service before completion of all the Work, the correction period for that item may start to run from an earlier date. This date shall be agreed upon in writing by the Contractor and Owner on or before the item is placed in continuous service.

Any and all other special guarantees which may be applicable to definite parts of the work under this agreement shall be considered as an additional guarantee and shall not reduce or limit the guarantee as provided by Contractor pursuant to this paragraph during the first year of the life of such guarantee.

9. The Contractor shall provide, on the execution of this Agreement, a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount bid as stipulated in the General Conditions, Section 00700-1.8, Bond, which bond shall be on the forms provided by the Owner in Section 00610, **(FAITHFUL PERFORMANCE BOND)**, and be conditioned upon the faithful performance of all work and payment of all the Contractor's obligation under the Contract Documents. Said bond shall be liable for any and all penalties and obligations which may be incurred by Contractor under this Agreement. The corporate surety bond shall be issued by a corporate surety approved by the Owner. The corporate surety shall be authorized to conduct business in California. At its discretion, the Owner may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the Owner. At its discretion, the Owner may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code. This bond shall remain in effect at least until one year after the Date of Completion, except as otherwise provided by Law or Regulation or by the Contract Documents.

10. In addition to the bond required under Paragraph 9, hereof, Contractor shall furnish a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount of bid, which bond shall be on the form provided by the Owner in Section 00620, **(PAYMENT BOND)**, and conform strictly with the provisions of Chapter 7, Title 15, Part 4, Division 3, of the Civil Code of the State of California, and all amendments thereto. The corporate surety bond shall be issued by a corporate surety approved by the Owner. The corporate surety shall be authorized to conduct business in California. At its discretion, the Owner may request that a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner of the State of California be submitted by the surety to the Owner. At its discretion, the Owner may also require the insurer to provide copies of its most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

11. (a) The form of the Faithful Performance (Section 00610), and Payment Bond (Section 00620), Bonds are provided by the Owner as part of the Contract Documents. Only such bond forms provided by the Owner are acceptable and, to the extent required by project funding sources, shall be executed by corporate sureties who are admitted surety insurers in the state of California in accordance with applicable law and acceptable to the Owner. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

(b) If the surety on any Bond furnished by the 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, the Contractor shall within 7 days thereafter substitute another Bond and surety, which must be acceptable to the Owner.

(c) All bonds required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety companies that are duly licensed or authorized in the State of California to issue Bonds for the limits so required. Such surety companies shall also meet such additional requirements and qualifications as provided in the General Conditions, Section 00700-1.8.

12. The Contractor may substitute securities for the amounts retained by the Owner to ensure performance of the work in accordance with the provisions of Section 22300 of the Public Contract Code.

13. As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit in advance of excavations, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety in Title 8, Subchapter 4, Article 6, California Code of Regulations, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the work as set forth in the Contract Documents. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the Owner, the Design Consultant, Construction Manager nor any of their agents, consultants, volunteers, or employees. The Owner's review of the Contractor's excavation plan is only for general conformance to the California Construction Safety Orders.

Prior to commencing any excavation, the Contractor shall designate in writing to the Construction Manager the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

14. In accordance with Section 7104 of the Public Contract Code, whenever any work involves digging trenches or other excavations that extend deeper than four feet below the surface, the provisions of Section 00700-7.2, **Differing Site Conditions**, shall apply.

15. In accordance with Section 7103.5 of the Public Contract Code, the Contractor and subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the Owner 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, materials or services pursuant to this Contract or the subcontract. Such assignment shall be made and become effective at the time the Owner tenders final payment to the Contractor, without further acknowledgment by the parties.

16. Pursuant to Public Contract Code Section 7100, the acceptance by the Contractor of an undisputed payment made under the terms of the Contract shall operate as, and shall be, a release to the Owner, and their duly authorized agents, from all claim of and/or liability to the Contractor arising by virtue of the contract related to those amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the

release.

17. In accordance with California Business and Professions Code Section 7030, the Contractor is 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 ten (10) years of the date of the alleged violation. Any questions concerning the Contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

18. The acceptance of each payment made to Contractor under this Agreement shall constitute a warranty that all subcontractors, laborers and material suppliers on the Project have been paid for all work, material, labor provisions, provender, equipment, or other supplies and efforts made toward the construction of improvements.

19. **INDEMNIFICATION.** Contractor shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, the Owner and its officers, officials, employees, agents and volunteers, Design Consultant and its consultants for the Work and their respective agents and employees; and if one is designated by the Owner for the work, the Construction Manager and its consultants for the work and their respective agents and employees (collectively "the Indemnified Parties") in accordance with the requirements of Section 00800 – 2.1.6, Supplementary General Conditions.

20. **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.

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

CONTRACTOR

SAN RAFAEL SANITATION DISTRICT  
A Public Entity

By \_\_\_\_\_

By \_\_\_\_\_  
Kate Colin, Chair

Name \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

By \_\_\_\_\_  
Maribeth Bushey, Secretary

Name \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kerry Laiw Gerchow  
Deputy County Counsel

**END OF SECTION**