

**THE CITY OF SANTA ROSA
DESIGN-BUILD CONTRACT
WITH _____
CONTRACT NUMBER _____**

This Design-Build Contract ("Contract") is made as of this _____ day of _____, 2020, by and between the **CITY OF SANTA ROSA** (the "City"), a municipal corporation, and _____, a _____, (the "Design-Build Entity"). City and Design-Build Entity are herein collectively referred to as the "Parties."

RECITALS

A. City desires to obtain design and construction services for installation of a prefabricated structure at Sam Jones Hall (4020 Finley Avenue), (the "Project").

B. In order to retain a qualified Design-Build Entity to design and construct the Project, City issued a Request for Proposals, seeking proposals from qualified firms to design, fabricate, deliver and install the Project, utilizing a design-build delivery method as authorized by City Code Chapter 3.60 Design-Build Procurement.

C. Design-Build Entity represents to City that it is fully qualified to perform the work described above.

D. Design-Build Entity submitted a proposal for the Project, which was selected as providing the best-value to the City, and is prepared to enter into this Contract.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

CONTRACT

1. TERMS.

1.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto (with the first listed documents having the highest priority):

- a. Contract
- b. Exhibit C – Federal Provisions
- c. Attachment 1 – Insurance Requirements
- d. Attachment 2 – Design-Build Entity Proposal
- e. Attachment 3 – Design Specifications
- f. Attachment 4 – Project Description

1.1.1 Acknowledgement of Contract Documents. The above documents constitute and may hereinafter be referred to as the “Contract Documents.” In addition to signing this Contract, Design-Build Entity shall review and execute where appropriate all the Attachments to this Contract described above. Also, Design-Build Entity shall initial this section immediately below acknowledging that he or she has read, understood and agrees with all of the terms of the Contract Documents, including, but not limited to, Attachment 1 Insurance Requirements. Design-Build Entity shall not disclaim knowledge of the meaning and effect of any term or provision of the Contract Documents, and agrees to strictly abide by their meaning and intent.

**Design-Build Entity’s
Initials**

1.1.2 Design-Build Entity’s Basic Obligation. Design-Build Entity promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the "Scope of Work"), for a Guaranteed Maximum Price (“GMP”) of _____. Unless otherwise stated in the Contract Documents, the GMP shall pay for all costs and expenses required to design and construct the Project.

1.2 City’s Basic Obligation. City agrees to engage and does hereby engage Design-Build Entity as an independent Design-Build Entity to furnish all materials and to perform all work described in the Scope of Work for the Project according to the terms and conditions herein contained for the GMP set forth above. Except as otherwise provided in the Contract, City shall pay to Design-Build Entity, as

full consideration for the satisfactory performance by Design-Build Entity of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

1.3 City's Representative. City hereby designates _____@srcity.org, as the person to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall be authorized to act as liaison between City and Design-Build Entity in the administration of this Contract and all work on the Project. City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to Design-Build Entity.

1.4 Design-Build Entity's Representative. Design-Build Entity hereby designates _____, or his designee, to act as its representative for the performance of this Contract ("Design-Build Entity's Representative"). Design-Build Entity's Representative shall have full authority to represent and act on behalf of Design-Build Entity for all purposes under this Contract. Design-Build Entity's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

1.5 Extra Work. Extra Work shall be compensated at the rates set forth in Attachment 2 to this Contract and shall be initiated only upon written approval by City. All extra work shall be recorded by Design-Build Entity on a daily report signed by both the City and Design-Build Entity. The "daily reports" shall thereafter be considered the true record of extra work performed. A copy of the daily reports will be furnished to Design-Build Entity.

1.6 Force Account Work. All work done on a force account basis shall be recorded daily on report sheets prepared by Design-Build Entity and signed by both the City's Representative and Design-Build Entity. Such reports shall thereafter be considered the true record of force account work performed during the Project. Such reports shall be furnished to the City and a copy retained by Design-Build Entity. All extensions of labor, equipment, and material costs shall be completed by Design-Build Entity and submitted to the City's Representative within 30 days of the completion of the extra work. Completed and extended extra work reports received later than the times herein prescribed may be deemed invalid and rejected without payment at the discretion of the City.

1.7 Standard of Performance. Design-Build Entity's performance shall be consistent with the standards set forth in the Contract.

1.8 Access to Work. City, the City's Representative, their consultants, and other persons authorized by the City will at all times have access to the work on the Project wherever it is in preparation or progress. Design-Build Entity shall provide safe and proper facilities for such access and for inspection.

1.9 Staging Areas. Sam Jones Hall, located at 4020 Finley Avenue,

Santa Rosa, California, is an environmentally sensitive site. Design-Build Entity may only use existing concrete or asphalt paved areas for materials staging and may not under any circumstances disturb native soils.

1.10 Property and Facility Preservation. At Design-Build Entity's sole expense, facilities that are damaged, removed or destroyed because of the operations of Design-Build Entity or any of its subcontractors shall be replaced and restored to the same or better condition.

1.11 Submittals. Design-Build Entity shall submit to the City's Representative, and any other regulating agencies, completed packages of the Construction Documents, which includes project plans, project specifications, and material submittals, a list of all materials proposed to be used on this Project and any supporting documentation and/or samples required and source of supply. Design-Build Entity shall provide a separate draft plan submittal that includes 6 sets of project plans on maximum 24" x 36" white bond paper. Design-Build Entity shall provide a separate final plan submittal that included 6 sets of project plans on maximum 24" x 36" white bond paper. Design-Build Entity shall allow City's Representative a minimum of five (5) working days to review and respond to submittals. It is the Design-Build Entity's responsibility to allow appropriate time for other regulating agencies to review submittals per the regulating agency's requirements. Submittals shall be scheduled in a manner so as to not delay work on the Project. City reserves the right to reject any proposed material or document. City and Design-Build Entity explicitly agree that all materials and documents developed in the performance of this Contract are the property of City. City shall have unlimited ownership and copyrights in all drawings, designs, specifications, notes and any other documentation and other work developed for the Project.

1.12 Permits. Design-Build Entity shall obtain all necessary and required permits for the Project and pay associated permit and inspection fees. Contractor is responsible for all notification and coordination of the inspections for permitting as required.

1.13 Training and Warranty Documents. Prior to the filing of the Notice of Completion, Design-Build Entity shall schedule a minimum of one (1) hour of training at the Project site to provide training to City employees on the operation and maintenance of the roof systems. Design-Build Entity shall forward to City the manufacturers' equipment warranty coverage certificates and information.

1.14 Period of Performance and Liquidated Damages. Design-Build Entity guarantees that it shall perform and complete all work necessary for Final Completion of the Project, by the Guaranteed Completion Date of _____ ("GCD").

1.14.1 Design-Build Entity agrees that liquidated damages will apply in the amount shown in Section 8-1.10 of the State of California Department of

Transportation Standard Specifications 2010 per calendar day for each and every calendar day beyond the GCD that acceptance of work of the Project has not been achieved.

1.15 Days and Times authorized for Construction. Unless otherwise directed by the City's Representative, Design-Build Entity shall not conduct any activities at the Project site that generates noise before 8:00 a.m. or after 5:00 p.m., or on Saturday, Sunday, or State Holidays.

1.16 Design-Build Entity's Licensing. Design-Build Entity shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. Design-Build Entity, _____ (License No. _____) will act as the licensed general contractor for the Project. Design-Build Entity shall perform all work required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and Design-Build Entity shall be fully responsible to City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the general contractor shall be subject to City's prior written approval, which approval shall not be unreasonably withheld. The new general contractor shall be of at least equal competence as the prior general contractor. In the event that City and Design-Build Entity cannot agree as to the substitution of a new general contractor, City shall be entitled to terminate this Contract upon notice to Design-Build Entity. Design-Build Entity shall be licensed in the following appropriate classification(s) of contractor's license(s), for the Project, and must maintain the license(s) throughout the duration of the Project: Class B By its signature hereunder, Design-Build Entity certifies that it is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board. Design-Build Entity shall obtain and maintain the required licenses, permits and all other appropriate legal authorizations for all applicable federal, state and local jurisdictions (including California Environmental Quality Act clearance) and pay all applicable fees associated therewith. Design-Build Entity shall immediately notify City in writing of any change in its licensing status during the term of this Contract.

1.17 Termination. The Department may terminate your control of the work for failure to do any of the following (Pub Cont Code § 10253):

1. Supply an adequate workforce
2. Supply material as described
3. Pay subcontractors (Pub Cont Code § 10262)
4. Prosecute the work as described in the Contract

The Department may also terminate your control for failure to maintain insurance coverage.

1.18 Ineligible Contractors. Pursuant to Public Contract Code section 6109, no contractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code, may work on this Project.

1.19 Prevailing Wages/Labor Code. This Project is subject to the prevailing wage requirements of California Labor Code sections 1720 et seq. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed, copies of which are on file and will be made available to any interested party upon request at the office of City's Representative or online at www.dir.ca.gov. Any laborer or mechanic employed to perform work on the Project, which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by him. Design-Build Entity shall post these rates at the job site. Design-Build Entity shall comply with all applicable Labor Code provisions, including but not limited to, employment of apprentices, hours of labor and debarment of contractors. Design-Build Entity shall indemnify, defend and hold harmless the City against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes. The foregoing specified prevailing wage rates are minimum rates only, and Design-Build Entity may pay any wage rate in excess of the applicable rate. Pursuant to Labor Code §1775, Design-Build Entity as a penalty to the City shall forfeit up to two-hundred dollars (\$200.00) for each calendar day, or portion thereof for each worker paid less than the prevailing rate established by the Department of Industrial Relations for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage rate shall be paid to each worker by Design-Build Entity. If there is a difference between the minimum wage rates pre-determined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, Design-Build Entity and Subcontractors shall pay not less than the higher wage rate. City will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinates. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by Design-Build Entity and subcontractors, Design-Build Entity and subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question. Design-Build Entity shall only provide prevailing wage reports upon written request from the City.

1.20 Forfeitures for Health and Safety Violations. Design-Build Entity shall comply with all applicable provisions of the Santa Rosa City Code and any failure to do so shall constitute a breach of the Contract. In the event of any violation of the Santa Rosa City Code that may impact public health and safety, including, but not limited to Chapter 17-12, "Storm Water" and Chapter 13-04, "Street Encroachments," City shall have the right to impose a charge against Design-Build Entity in an amount equal to

\$500.00 per violation per day. Prior to the imposition of any charge hereunder, City shall first provide a written notice to Design-Build Entity of the violation and setting forth a reasonable period of time for Design-Build Entity to cure the violation(s). In the event Design-Build Entity fails to cure any such violation within the time provided, City shall have the right, in addition to all other rights and remedies available to City, to deduct and withhold as a permanent forfeiture by Design-Build Entity the appropriate amounts from any payment otherwise due Design-Build Entity under this Contract.

1.21 OSHA Compliance. Attention is directed to the current Occupational Safety and Health Administration (OSHA) Standards. All equipment, tools and materials which are furnished and/or installed as part of this Contract shall meet or exceed the aforementioned standards in order to be considered acceptable.

1.22 Material Guaranty. Before any contract is awarded, the licensed general contractor named in 1.16 may be required to furnish samples of materials and detailed submittals of equipment to be used in construction of the Project, which samples may be subjected to tests to determine their quality and fitness for the work. Design Build Entity shall unconditionally guarantee the materials for the period(s) stated in Attachment 2.

1.23 Performance, Payment and Material Bonds. Design-Build Entity will be required to furnish City with three (3) good and sufficient bonds (one original of each) issued by a corporate surety in good financial standing and authorized and admitted to transact a surety business in the State of California for purposes and in the amounts stated below. These bonds shall be submitted to City within ten (10) days after receipt by Design-Build Entity of the Notice of Contract Award. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure section 995.120. The GMP includes the cost of obtaining such bonds.

- a. **Performance Bond:** A performance bond shall be furnished to guarantee the faithful performance of the terms and conditions of the Contract by Design-Build Entity, which shall be executed in a sum of 50% of the GMP.
- b. **Labor and Materials Bond:** A labor and materials bond (payment bond) shall be furnished in accordance with Part 6 of Division 4, sections 8000 *et seq.* of the California Civil Code to guarantee City against any and all claims of subcontractors or other third parties furnishing labor, materials, or supplies for said contract, which shall be executed in a sum of one hundred percent (100%) of the GMP.
- c. **Material Guaranty Bond:** Design-Build Entity shall furnish a material guaranty bond (warranty bond) to serve as surety for the guarantee requirements outlined in Section 1.21, which shall be executed in a sum of not less than one-half of the GMP. The guarantee shall cover fifty percent (50%) of all costs of repairs within the initial one (1) year period, including all costs of labor, materials, equipment, and incidentals.

Whenever any surety or sureties on any such bonds, or on any bonds required by law for the protection of the claims of laborers and materials-men become insufficient, or the City's award authority has cause to believe that such surety or sureties have become insufficient, a demand in writing may be made of Design-Build Entity for such further bond or bonds or additional surety, not exceeding that originally required, as is considered necessary considering the extent of the work remaining to be done. Thereafter no payment shall be made upon the Contract to Design-Build Entity or any assignees of Design-Build Entity until such bond or bonds or additional surety has been furnished.

1.24 Discrimination Prohibited. In the performance of the Contract, Design-Build Entity shall not discriminate in recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code sections 12900 *et seq.*), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts.

1.25 Character of Workers. If any subcontractor or person employed by Design-Build Entity shall appear to the City's Representative to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the request of the City's Representative, and such person shall not again be employed on the Project. No additional compensation shall be granted to Design-Build Entity in the event City exercises any part of its rights under this section and any and all costs related to such exercise shall be borne by Design-Build Entity.

1.26 Immigration Reform Act Requirements. Design-Build Entity shall warrant that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Design-Build Entity shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Design-Build Entity shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to ensure continued compliance with all federal statutes and regulations. Notwithstanding the above, Design-Build Entity, in the performance of the Contract shall not discriminate against any person in violation of 8 USC § 1324b. Design-Build Entity shall retain such documentation for all covered employees for the period described by law. Design-Build Entity shall indemnify, defend and hold harmless City and its officers and employees from employer sanctions and other liability which may be assessed against Design-Build Entity or City or in connection with any alleged violations of federal statutes or regulations pertaining to the eligibility

for employment of persons performing services under the Contract.

1.27 Design-Build Entity's Engineer of Record. Design-Build Entity shall name a specific person to act as the Engineer of Record , subject to the approval of City. Design-Build Entity hereby designates _____ (License No. _____) to act as the Engineer of Record for the Project. Design-Build Entity's Engineer of Record shall perform all services required under the Contract in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and Design-Build Entity shall be fully responsible to City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Engineer of Record shall be subject to City's prior written approval, which approval shall not be unreasonably withheld. The new Engineer of Record shall be of at least equal competence as the prior Engineer of Record. In the event that City and Design-Build Entity cannot agree as to the substitution of a new Engineer of Record, City shall be entitled to terminate this Contract.

1.28 Design-Build Entity's Indemnification. Design-Build Entity agrees to protect, save, defend and hold harmless, (with counsel of City's choosing) to the greatest extent provided by law, the City, its governing body and each member thereof, its officers, agents and employees ("Indemnified Parties") from any and all loss, damage, costs, lawsuits, claims, liabilities, demands, causes of action judgments, reasonable expenses or damages of any nature, including reasonable attorneys' fees, for injury or death of any person, or damage to property, or from third party claims' interference with the use of property, arising out of the actual or alleged negligent acts, errors or omission, or willful misconduct by Design-Build Entity, Design-Build Entity's agents, officers, employees, or subcontractors retained by Design-Build Entity to perform work pursuant to this Contract. The only exception to Design-Build Entity's responsibility to protect, save, defend and hold harmless the Indemnified Parties is where a claim, liability, expense or damage occurs due to the sole negligence, willful misconduct or active negligence of the Indemnified Parties. This hold harmless provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by Design-Build Entity. Notwithstanding the foregoing, to the extent the Scope of Work is subject to California Civil Code section 2782.8, the above indemnity shall be limited, to the extent required by Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design-Build Entity.

1.28.1 In claims against any person or entity indemnified under this provision, that are made by an employee of Design-Build Entity or any subcontractor, a person indirectly employed by Design-Build Entity or any subcontractor, or anyone for whose acts Design-Build Entity or any subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Build Entity or any subcontractor under workers' compensation acts, disability benefit acts, or other

employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

1.28.2 Joint and several liability shall apply to Design-Build Entity. In the event Design-Build Entity and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then all such parties shall be jointly and severally responsible to each of the indemnitees for indemnification, and the ultimate responsibility among such indemnifying parties for the loss and expense of any such indemnification shall be resolved without jeopardy to any indemnitee listed herein.

1.29 Insurance. Design-Build Entity shall, at a minimum, maintain in full force and effect all of the insurance coverages described in, and in accordance with the insurance requirements set forth in Attachment 1.

1.30 Design-Build Entity's Labor Certification. By its signature hereunder, Design-Build Entity maintains that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of all work described in the Scope of Work.

1.31 Reporting Requirements. Design-Build Entity shall comply with all reporting requirements as required by applicable law and as set forth in this Contract.

1.32 Successors. The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. Design-Build Entity may not either voluntarily or by action of law, assign any obligation assumed by Design-Build Entity hereunder without the prior written consent of City.

1.33 Potential Claims and Dispute Resolution. "Claim" means a separate demand by Design-Build Entity sent by registered mail or certified mail with return receipt requested, for one or more of the following: (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City under the Contract; (B) Payment by the City of money or damages arising from work done by, or on behalf of, Design-Build Entity pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; or (C) Payment of an amount that is disputed by the City.

Upon receipt of a Claim, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide Design-Build Entity a written statement identifying what portion of the Claim is disputed and what portion is undisputed, provided, the parties may extend the 45 day time period by mutual agreement.

If the City needs approval from the City Council to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension expires to provide Design-Build Entity a written statement identifying the disputed portion and the undisputed portion.

Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, the Claim shall be deemed rejected in its entirety.

If a Design-Build Entity disputes the City's written response, or if the City fails to respond to a Claim within the time prescribed, the Design-Build Entity may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall conduct a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Design-Build Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the Claim, as identified by Design-Build Entity in writing, shall be submitted to nonbinding mediation, with the City and the Design-Build Entity sharing the associated costs equally. The City and Design-Build Entity shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

1.34 Progress Payments. Once each month for progress pay purposes, the Design-Build Entity shall prepare and deliver to the City's Representative a written estimate of the total amount of completed work and materials received by Design-Build Entity. The City shall retain five percent of such estimated value of the completed work and received materials and pay Design-Build Entity the balance after deducting all previous payments and all sums to be retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the City's Representative, the work is not proceeding in accordance with the provisions of the Contract or when, in the City Representative's judgment, the total value of the completed work since the last estimate is less than \$500.00. No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

After Contract acceptance, the City's Representative will prepare a written proposed

final estimate of the proposed final quantities of work completed under the Contract and the value of such work and will submit such estimate to Design-Build Entity. The City shall retain five percent of such estimated value of the work done and shall pay to Design-Build Entity the balance after deducting all amounts to be retained under the provisions of the Contract.

The City may, at its option and at any time, retain out of any amounts due Design-Build Entity sums sufficient to cover any unpaid claims of City or others, provided that sworn statements of all non-City claims shall have been filed with the Director of Finance.

1.35 Final Payment and Claims. The processing of payment of the final estimate shall not be commenced less than 35 days after the date of recording of the Notice of Completion with the County Recorder's Office. Design-Build Entity is advised that it takes approximately ten days for a check to be issued following a request for payment.

Design-Build Entity shall submit its written statement of all claims for additional compensation under the Contract to the City's Representative within 15 days after submission to Design-Build Entity of the proposed final estimate.

If Design-Build Entity does not file a claim within the 15 day period, or upon Design-Build Entity's approval, the City's Representative will issue a final written estimate and the City shall pay to Design-Build Entity the entire sum due after deducting all previous payments, if any, and all amounts to be retained under the provisions of the Contract.

If Design-Build Entity files a claim within the 15 day period, the City's Representative will furnish a semi-final estimate and pay the amount due under the semi-final estimate within 30 days. The semi-final estimate is conclusive as to the amount payable except as may be affected by claims and any amount retained. The City's Representative shall then consider and investigate such claim, and shall make such revision in the final quantities as the City's Representative may find to be due, and shall then make and issue a final written estimate. The City will pay the amount due, after deducting all previous payments, if any, and amounts to be retained under the provisions of the Contract.

Any and all prior partial estimates and payments shall be subject to correction in the final estimate and payment.

The final estimate shall be conclusive and binding against both parties to the Contract on all questions relating to the performance of the Contract and the amount of work done thereunder and compensation therefor, except in the case of gross error.

1.36 Final Determination of Claims. Claims filed by Design-Build Entity shall be in sufficient detail to enable the City's Representative to determine the basis and amount of the Claims. Design-Build Entity shall also furnish reasonable documentation to the City to support Claims. If additional information is required by the City's Representative, Design-Build Entity shall provide such information to the City's

Representative no later than the 15th day after receipt of the written request from the City's Representative. If the 15th day falls on a weekend, holiday, or day City offices are closed, then the information shall be provided to the City's Representative no later than close of the next business day. Failure to submit the requested information to the City's Representative within the time specified will be sufficient cause for denying the Claim.

Design-Build Entity shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The City's Representative or any designated Claim investigator or auditor shall have access to those records and any other records as may be reasonably required by the City's Representative to determine the facts or contentions in each Claim. Failure to grant access to such records shall be sufficient cause for denying the Claims.

1.37 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

Design-Build Entity:

City:

1.37.1. Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

1.38 Attachments. All Attachments referenced in this Contract are incorporated into the Contract by this reference.

1.39 Recitals. The above referenced recitals are true and correct and are incorporated into this Contract by this reference.

1.40 Authority of Signatories. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

1.41 Federal Provisions

Contractor shall comply with the provisions in Exhibit C to this Agreement. In the event of a conflict between any provision in Exhibit C and any other provision of this Agreement, the more stringent provision shall control and prevail.

1.42 Counterparts and Electronic Signatures

Counterparts and Electronic Signatures. This Agreement and future documents relating thereto may be executed in two or more counterparts, each of which will be deemed an original and all of which together constitute one Agreement. Counterparts and/or signatures delivered by facsimile, pdf or City-approved electronic means have the same force and effect as the use of a manual signature. Both City and Consultant wish to permit this Agreement and future documents relating thereto to be electronically signed in accordance with applicable federal and California law. Either Party to this Agreement may revoke its permission to use electronic signatures at any time for future documents by providing notice pursuant to the Agreement. The Parties agree that electronic signatures, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective Agreement. The City reserves the right to reject any signature that cannot be positively verified by the City as an authentic electronic signature.

Design-Build Entity:

CITY OF SANTA ROSA
a Municipal Corporation

TYPE OF BUSINESS ENTITY (*check one*) By: _____
 _____ Individual/Sole Proprietor Print Name: _____
 _____ Partnership Title: _____
 _____ Corporation
 _____ Limited Liability Company
 _____ Other (please specify: _____)

Signatures of Authorized Persons:
 By: _____
 Print Name: _____
 Title: _____
 By: _____
 Print Name: _____
 Title: _____

APPROVED AS TO FORM:

 Office of the City Attorney

ATTEST:

 City Clerk

City of Santa Rosa Business Tax Cert. No.

EXHIBIT C

A. Definitions

1. Government means the United States of America and any executive department or agency thereof.
2. FEMA means the Federal Emergency Management Agency.
3. Third Party Subcontract means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Contract, included but not limited to the requirements of 2 C.F.R. §§ 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Contract.
2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount payable under this Contract exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in

paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Clean Air Act and Federal Water Pollution Control Act

This Section D shall apply in the event the amount payable under this Contract exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Suspension and Debarment

1. This Contract is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Contract with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. Procurement of Recovered Materials

1. In the performance of this Contract, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - b. Meeting Contract performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

H. MBE/WBE Requirements

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

I. Miscellaneous Provisions

1. DHS Seal. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
2. FEMA Assistance. Contractor acknowledges that FEMA financial assistance will be used to fund this Contract only. Contractor shall comply will all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.
3. Federal Government Not Party. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Contract.
4. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Contract.

J. Equal Employment Opportunity

During the performance of this Contract, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

K. Records.

1. Contractor shall retain any and all records necessary to document the charges under this Contract and make such records available for inspection for a period of not less than four (4) years.

2. Contractor shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate.
3. Contractor shall maintain the records and any and all other records pertinent to this Contract for a period of four (4) years after completion of all services hereunder.
4. Contractor agrees to provide City, the State of California, the Federal Emergency Management Agency ("FEMA") Administrator, the Comptroller General of the United States, and any or all of their authorized representatives, access to any books, documents, papers, and records of Contractor which are pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
5. Contractor agrees to permit all or any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to work sites pertaining to the services being performed under this Contract.

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