

## FIRST AMENDMENT TO CONSTRUCTION AGREEMENT

This FIRST AMENDMENT TO CONSTRUCTION AGREEMENT is dated for identification 4<sup>th</sup> day of June 2024 and amends that certain Construction Agreement dated July 12, 2023, made by and between the Town of Los Gatos, ("Town,") and Tucker Construction Inc. ("Contractor") identified as an S Corporation and whose address is 1725 Little Orchard St. Suite D, San Jose, CA 95125.

### RECITALS

- A. Town and Consultant entered into a Consultant Agreement on July 12, 2023, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Exhibit A to this Amendment.
- B. Town desires to amend the Agreement to increase the compensation of the Agreement.

### AMENDMENT

1. 2.6 Compensation is amended to read as follows:  
Compensation for the Contractor's professional services shall be increased by \$13,537.75, for a total agreement amount **not exceed \$287,976.75**. Payment shall be based upon Town approval of each task based on Exhibit B.
2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Consultant have executed this Amendment.

Town of Los Gatos:

Approved as to Consent:

\_\_\_\_\_  
Laurel Prevetti, Town Manager

\_\_\_\_\_  
Mark Tucker, President

Department Approval:

\_\_\_\_\_  
Nicolle Burnham  
Director of Parks and Public Works

Approved as to Form:

Attest:

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney

\_\_\_\_\_  
Wendy Wood, CMC, Town Clerk



# CONTRACT CHANGE ORDER

PROJECT NAME: Los Gatos Adult Recreation Center Restroom Remodel for ADA Compliance  
 OWNER NAME: Town of Los Gatos  
 CCO NO.: 2  
 DATE: 5/15/2024  
 JOB NO.: 421-821-2601-82303

The following changes are hereby made to CONTRACT DOCUMENTS:

ITEM	DESCRIPTION OF CHANGED WORK	UNIT	UNIT PRICE	QUANTITY	EXTENSION
1	<b>Under Slab Conduit Repair</b> Subcontractor: Repair damaged conduit and repull wires				\$1,460.50
2	<b>1" Waterline Extension</b> Subcontractor: Bring water from existing restroom to (N) location Contractor: Patch and paint at ceiling access in elevator room, add access door Material Cost	Hrs	\$105.00	8	\$4,112.40 \$840.00 \$85.00
3	<b>Rain Water Leader</b> Subcontractor: Relocate (E) RWL to clear obstruction for (N) restroom door Contractor: Framing Material Cost	Hrs	\$125.00	4	\$2,218.35 \$500.00 \$40.00
4	<b>Hallway Repairs</b> Subcontractor: Remove/relocate existing electrical Contractor: Remove header and framing patch and paint Material Cost	Hrs	\$125.00	12	\$1,403.00 \$1,500.00 \$355.00
5	<b>Locating</b> Subcontractor: Scope drain lines for CCO#1				\$1,023.50

I hereby certify that an unexpended appropriation is available in the above fund for the above contract as estimated, and that funds are available as of this date of signature.	Total Cost of CHANGE	\$13,537.75
	Total Credit of CHANGE	
	Previous CHANGE ORDERS	\$24,949.00
	Original CONTRACT	\$249,490.00
	CONTRACT Amount to Date	\$287,976.75

\_\_\_\_\_  
 Authorized Signature Date

**ACCEPTANCE**

Contractor hereby agrees to accept the amount set forth herein as payment in full for the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.

The CONTRACT TIME will be increased by 10 working days.

\_\_\_\_\_  
 Contractor Date

## CONSTRUCTION AGREEMENT

This Agreement is dated for identification this 12<sup>th</sup> of July 2023 and is made by and between the TOWN OF LOS GATOS, a California municipal corporation, whose address is 110 East Main Street, Los Gatos, California 95030 (hereinafter "TOWN"), and Tucker Construction, Inc., identified as an S Corporation and whose address is 1725 Little Orchard St. Suite D, San Jose, CA 95125 (hereinafter "CONTRACTOR").

NOW, THEREFORE, the parties agree:

### ARTICLE I: WORK TO BE DONE AND DOCUMENTS FORMING THE CONTRACT.

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the said TOWN, and under the conditions expressed in the two bonds hereunto annexed, the said CONTRACTOR agrees with the said TOWN, at his own proper cost and expense, to do all the work and furnish all the materials and equipment necessary to construct and complete, in accordance with the plans and specifications hereinafter mentioned, in a good, workmanlike and substantial manner, under the supervision of the Town Engineer, or his, of the TOWN OF LOS GATOS, California, all the works and improvements described, mentioned and set forth in those plans and specifications on file in the Office of the Parks and Public Works of said TOWN, entitled:

“Plans and Specifications for  
Project #421-821-2601-82303 FY 2022/23 Adult Recreation Center ADA Compliant Public  
Restroom”

which said plans and specifications and all the documents therein contained, including the TOWN OF LOS GATOS's Standard Provisions, are hereby specially referred to and by such reference made part of this contract.

### ARTICLE II: CONTRACTOR'S ACCEPTANCE

CONTRACTOR agrees to receive and accept the prices shown on Exhibit “A” \$249,490 and up to \$24,949 in change orders, which is attached hereto and incorporated by reference herewith, as full compensation for furnishing all materials and equipment and for doing all the work described in the contract documents; also for all loss or damage as provided in the contract documents in the prosecution of the work until its acceptance by the Town Council of the TOWN OF LOS GATOS, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the contract documents, plans and specifications, and the requirements of the Town Engineer.

### **ARTICLE III: ACCEPTANCE BY TOWN**

The said TOWN 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.

### **ARTICLE IV: COMPLETION OF AGREEMENT**

Reference is made to Part I – Page 1 of the TOWN's Project Specifications Notice to Contractors which are hereby made a part of this contract. Inasmuch as the work called for under this contract concerns a needed public improvement, the time of performance and completion of this work is of the essence of this contract. It is expressly understood and agreed by the parties hereto that all the work called for under this contract, in all its parts and requirements, shall be completed ninety (90) working days from Notice to Proceed.

### **ARTICLE V: HOURS OF LABOR**

The CONTRACTOR shall forfeit, as a penalty, to the TOWN, Twenty-Five Dollars (\$25) for each workman employed in the execution of the contract by him or by any subcontractor for each calendar day during which any workman is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810-1815 inclusive of the Labor Code and all amendments thereto.

### **ARTICLE VI: APPRENTICES**

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code governing the employment of apprentices by the CONTRACTOR or any subcontractor under him. CONTRACTOR and any of his subcontractors shall comply with the requirements of said sections of the Labor Code; CONTRACTOR shall have full responsibility for compliance with the said sections regardless of any other contractual or employment relationships alleged to exist.

Information relative to apprenticeship standards and other requirements may be obtained from the Director of Industrial Relations ex officio the Administrator of Apprenticeship, San Francisco, California or from the Division of Apprenticeship Standards at its branch offices.

### **ARTICLE VII: NONDISCRIMINATION**

The CONTRACTOR sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. CONTRACTOR shall carry

out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts.

Failure by CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

#### **ARTICLE VIII: INDEPENDENT CONTRACTOR**

It is agreed that CONTRACTOR is an independent contractor, and all persons working for or under the direction of CONTRACTOR are CONTRACTOR's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of TOWN.

#### **ARTICLE IX: OWNERSHIP OF DATA AND DOCUMENTS**

CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and ACAD files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of TOWN. CONTRACTOR shall regularly provide such documents to TOWN upon TOWN's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to TOWN forthwith.

#### **ARTICLE X: INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, and hold harmless the TOWN, its elected and appointed officials, employees, and agents ("Indemnified Parties"), from and against any claims, allegations, damages, awards, judgments, and expenses of every kind or character, including, but not limited to, attorney fees and expert costs, which may arise out of or result from in whole or in part CONTRACTOR's performance of the work, except to the extent caused by the sole negligence or willful misconduct of Indemnified Parties. CONTRACTOR's obligation to defend Indemnified Parties shall be immediate upon written notice by TOWN to CONTRACTOR and CONTRACTOR shall, if requested by TOWN, defend Indemnified Parties using counsel approved by TOWN in its sole discretion.

#### **ARTICLE XI: INSURANCE**

a. Commercial General Liability/Automobile Liability Insurance:

CONTRACTOR shall obtain and maintain Commercial General Liability insurance in the amount of Two Million Dollars (\$2,000,000) and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit

shall be twice the required occurrence limit. CONTRACTOR's insurance coverage shall be written on an occurrence basis.

b. Workers' Compensation Insurance:

CONTRACTOR shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

CONTRACTOR is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and CONTRACTOR maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for TOWN under said agreement: (1) CONTRACTOR will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California, or (2) should CONTRACTOR become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, CONTRACTOR shall forthwith comply with those provisions and send evidence of financial compliance to TOWN.

c. Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to TOWN.

d. Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to TOWN's approval. Original Certificates of Insurance with endorsements shall be received and approved by TOWN before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to TOWN or increase the duration of the project.

e. Other Insurance Provisions:

(1) The TOWN OF LOS GATOS, its elected and appointed officials, employees, and agents are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement approved by Town Attorney for Commercial General and Automobile Liability coverage.

(2) For any claims related to this project, CONTRACTOR's insurance coverage shall be primary and any insurance or self-insurance maintained by TOWN, its elected and appointed, officials, employees, and agents shall not contribute to it.

(3) Each insurance policy required shall be endorsed that a thirty (30) day notice be given to TOWN in the event of cancellation or modification to the stipulated insurance coverage.

(4) In the event CONTRACTOR employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of CONTRACTOR to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by TOWN or acceptance of the Certificate of Insurance by TOWN shall not relieve or decrease the extent to which CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of TOWN's rights to insurance coverage hereunder.

(6) If, for any reason, CONTRACTOR fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. TOWN, at its sole option, may terminate this contract and obtain damages from CONTRACTOR resulting from said breach. Alternately, TOWN may purchase such required insurance coverage, and without further notice to CONTRACTOR, TOWN may deduct from sums due to CONTRACTOR any premium costs advanced by TOWN for such insurance.

#### **ARTICLE XII: BONDING REQUIREMENT**

CONTRACTOR agrees to post a Faithful Performance Bond and a payment bond for Labor and Materials, or other guarantees, in the required \$249,490 upon bond forms provided by the TOWN, guarantying the performance of the terms of this Agreement. Surety issuing bonds for CONTRACTOR shall be approved by the U.S. Department of Treasury's Financial Management Service and shall be listed on the most current Treasury Circular 570 as contained in the Federal Register.

Contractor agrees to allow five percent of the faithful performance bond to remain in effect for a period of two years following Town Council project acceptance as guarantee for any needed repair or replacement caused by defective materials and workmanship.

#### **ARTICLE XIII: MAINTENANCE AND GUARANTY**

CONTRACTOR shall promptly repair, replace, restore, or rebuild, as the TOWN may determine, any finished product in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during a two (2) year period subsequent to the date of final acceptance.

This article does not in any way limit the guaranty on any items for which a longer guaranty is specified or on any items which a manufacturer gives a guaranty for a longer period, nor does it limit the other remedies of the TOWN in respect to a latent defect, fraud or implied warranties. CONTRACTOR shall furnish the TOWN all appropriate guaranties or warranty certificates upon completion of the project.

#### **ARTICLE XIV: SHORING FOR TRENCHES**

If the contract specifies an expenditure of Twenty-Five Thousand Dollars (\$25,000) or greater for trenching, and if the depth of the trench is five feet (5') or more, then Section 6705 of the Labor Code shall also be applicable.

#### **ARTICLE XV: APPLICABLE LAWS AND ATTORNEY'S FEES**

This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the TOWN Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

#### **ARTICLE XVI: LIQUIDATED DAMAGES**

It is mutually agreed by CONTRACTOR and TOWN that in the event that completion of the construction by CONTRACTOR under this Agreement is delayed beyond ninety (90) working days from Notice to Proceed, TOWN will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, CONTRACTOR shall pay to TOWN the sum of Five Hundred Dollars (\$500.00) per day in liquidated damages for each and every calendar day such delay in completion of the services under this Agreement continues beyond ninety (90) working days from Notice to Proceed. In the event that the liquidated damages are not paid, CONTRACTOR agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to CONTRACTOR under this Agreement.

#### **ARTICLE XVII: INTERPRETATION OF CONTRACT**

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

#### **ARTICLE XVIII: AMENDMENTS AND CHANGE ORDERS**

This Agreement may be amended from time to time as necessary by formal and written amendment or authorized change order executed by the Town Manager or designee and principal acting on behalf of the CONTRACTOR.

## **ARTICLE XIX: DBE RESPONSIBILITIES**

For projects that are State or Federal funding; With respect to Disadvantaged Business Enterprises, CONTRACTOR shall do the following:

(1) Pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from TOWN. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

(2) Release all retainage owed to a subcontractor for satisfactory completion of the accepted work within thirty (30) days after TOWN's payment to CONTRACTOR. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of TOWN. This clause applies to both DBE and non-DBE subcontractors.

## **ARTICLE XX: PREVAILING WAGES**

Prevailing Wage. This project is subject to the requirements of Section 1720 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform work on the project are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 which are defined as a "public work" by the State of California. This includes: construction, demolition, repair, alteration, maintenance and the installation of photovoltaic systems under a Power Purchase Agreement when certain conditions are met under Labor Code Section 1720.6. This include service and warranty work on public buildings and structures.

1. The applicable California prevailing wage rate can be found at [www.dir.ca.gov](http://www.dir.ca.gov) and are on file with the Town of Los Gatos Parks and Public Works Department, which shall be available to any interested party upon request. The contractor is also required to have a copy of the applicable wage determination posted and/or available at each jobsite.
2. Specifically, contractors are reminded of the need for compliance with Labor Code Section 1774-1775 (the payment of prevailing wages and documentation of such), Section 1776 (the keeping and submission of accurate certified payrolls) and 1777.5 in the employment of apprentices on public works projects. Further, overtime, weekend and holiday pay, and shift pay must be paid pursuant to applicable Labor Code section.
3. The public entity for which work is being performed or the California Department of Industrial Relations may impose penalties upon contractors and subcontractors for failure to comply with prevailing wage requirements. These penalties are up to \$200 per day per worker for each wage violations identified; \$100 per day per worker for failure to provide the required paperwork and documentation requested within a 10-day window; and \$25 per day per worker for any overtime violation.

4. As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the TOWN, along with its request for payment, all applicable and necessary certified payrolls (for itself and all applicable subcontractors) for the time period covering such payment request. The term “certified payroll” shall include all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by the Agency or its designee including, but not limited to: certified payroll, fringe benefit statements and backup documentation such as monthly benefit statements, employee timecards, copies of wage statements and cancelled checks, proof of training contributions (CAC2 if applicable), and apprenticeship forms such as DAS-140 and DAS-142.
5. In addition to submitting the certified payrolls and related documentation to the TOWN, the contractor and all subcontractors shall be required to submit certified payroll and related documents electronically to the California Department of Industrial Relations. Failure to submit payrolls to the DIR when mandated by the project parameters shall also result in the withholding of progress, retention and final payment.
6. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
7. No contractor or subcontractor may be awarded a contract for public work on a public works project, unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Contractors MUST be a registered “public works contractor” with the DIR AT THE TIME OF BID. Where the prime contract is less than \$15,000 for maintenance work or less than \$25,000 for construction alternation, demolition or repair work, registration is not required.
8. Should any contractor or subcontractors not be a registered public works contractor and perform work on the project, Contractor agrees to fully indemnify the TOWN for any fines assessed by the California Department of Industrial Relations against the TOWN for such violation, including all staff costs and attorney’s fee relating to such fine.
9. The TOWN shall withhold any portion of a payment; including the entire payment amount, until certified payroll forms and related documentation are properly submitted, reviewed and found to be in full compliance. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., the TOWN may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

**ARTICLE XXI: ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

**ARTICLE XXII: PUBLIC RECORDS**

The parties recognize and acknowledge that TOWN is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

**ARTICLE XXIII: NOTICES**

Any notice required to be given to CONTRACTOR shall be deemed to be duly and properly given if mailed to CONTRACTOR, postage prepaid, addressed to:

Tucker Construction, Inc.  
1725 Little Orchard St. Suite D  
San Jose, CA 95125

or personally delivered to CONTRACTOR at such address or at such other addresses as CONTRACTOR may designate in writing to TOWN.

Any notice required to be given TOWN shall be deemed to be duly and properly given if mailed to TOWN, postage prepaid, addressed to:

Nicolle Burnham  
Parks and Public Works Director  
TOWN OF LOS GATOS  
41 Miles Avenue  
Los Gatos, California 95030

or personally delivered to TOWN at such address or at such other addresses as TOWN may designate in writing to CONTRACTOR.

**ARTICLE XXIV: SECTION 7106 FORM**

Attached to the Agreement is a fully executed and sworn non-collusion affidavit as required by Section 7106 of the California Public Contracts Code. Said affidavit is incorporated herein by this reference.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first written above.

APPROVED AS TO CONTENT:

DocuSigned by:  
Nicolle Burnham  
0297831349044C3...  
Nicolle Burnham  
Director of Parks and Public Works

"TOWN":  
TOWN OF LOS GATOS

DocuSigned by:  
By: Laurel Prevetti  
853FEEA2EB39470...  
Laurel Prevetti  
Town Manager

APPROVED AS TO FORM:

DocuSigned by:  
Gabrielle Whelan  
EFD6738A5534428...  
Gabrielle Whelan, Town Attorney

Attest:

DocuSigned by:  
Wendy Wood  
BF6EBCBE2C214F8...  
Wendy Wood, CMC, Town Clerk

CONTRACTOR: Mark Tucker  
6F3065A47A7A45B...  
Name: \_\_\_\_\_  
Tucker Construction, Inc.  
Address: 1725-D Little Orchard Street  
San Jose ca 95125  
Tax ID No. or SSAN:  
77-0466092

By: Mark Tucker  
Title: President  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

### BID FORM

**TO: The Town of Los Gatos, County of Santa Clara,  
State of California, herein called Owner**

**FROM: Tucker Construction Inc \_\_\_\_\_, herein called Contractor**

Pursuant to and in compliance with your Notice to Contractors and the Contract Documents relating to the **CIP #421-821-2601-82303 FY 2022/23 ADULT RECREATION CENTER ADA COMPLIANT PUBLIC RESTROOM**, including Addenda No. 1, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, the undersigned bidder, having become thoroughly familiar with the terms and conditions of the Contract Documents and with the local conditions affecting the performance and the costs of the Work at the place where the Work is to be done, and having inspected the site in all particulars, hereby proposes and agrees to fully perform the work within the time stated and in strict accordance with the Contract Documents (including the furnishing of any and all labor and materials) and do all the work required to construct and to complete said work in accordance with the Contract Documents.

The undersigned agrees to complete all work or a firm price, Base Bid

Total Base Bid (in numbers) \$
249,490.00
Total Base Bid (written)
Two Hundred Forty-Nine Thousand Four Hundred Ninety

**A. SCHEDULE OF VALUES**

The contractor shall submit a Schedule of Values identifying costs of Major Items of Work within 5 days of scheduled date for award of bid by the town. The major items of work shall be further broken down into definable features of work when requested by the Town. Contractor shall assign prices to all features of work which aggregate the Contract Price.

**B. BID FORM**

The quantities shown on this bid form are approximate only, being given as a basis for the comparison of bids, and the Owner does not, expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or class or portion of the work as may be deemed necessary or advisable by the Director of Parks & Public Works. This bid will be rejected if bidder fails to provide a bid for each item. The Owner reserves the right to make a comparison of bids based on any combination of the above alternate bid items.

**C. RESERVATION**

It is understood that the Owner reserves the right to reject this bid, but that this bid shall not be withdrawn for a period of 60 days from the date prescribed for its opening.

**D. SUBCONTRACTORS**

Attached hereto and incorporated herein is the complete and entire list of subcontractors to be employed by the undersigned in the performance of the work.

**E. NOTICE**

If written notice of the acceptance of this bid is mailed or delivered personally to the undersigned within 60 days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned bidder shall execute and deliver the Contract Documents to Owner in accordance with this bid as accepted, and will also furnish and deliver to Owner the Performance Bond, Labor and Material Bond as specified, and proof of insurance coverage as required in Part I, under "Construction Agreement," of these Specifications, all within 10 calendar days after personal delivery or after deposit in the mails, of the notification of acceptance of this bid. The above-mentioned bonds shall be satisfactory to, and on the forms approved by Owner.

Notice of acceptance or request for additional information may be addressed to the undersigned at the address set forth below.

**F. DISCLOSURE**

The undersigned declares that this bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that the bid is genuine and not collusive or sham; that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid and has not directly or indirectly colluded or agreed with any bidder or anyone else to put in a sham bid or to refrain from bidding; that the undersigned has not directly or indirectly sought by agreement, communication or conference with anyone to fix his/her bid price or the bid price of any other bidder, or to fix any overhead, profit or cost element of such bid price or of that of any other bidder, or to secure any

advantage against the Town of Los Gatos or anyone interested in the proposed Contract; that the only persons or parties interested in this bid as principals are those named herein; that all statements contained in this bid are true; that the undersigned has not directly or indirectly, submitted his/her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any other persons, partnership, corporation, or association except to such person or persons as have a direct financial interest in bidder's general business; and that the undersigned has not accepted any bid from any subcontractor or vendor through any bid depository, the Bylaws, Rules or Regulations of which prohibit or prevent the undersigned from considering any bid from any subcontractor or vendor, which is not processed through said bid depository, or which may prevent any subcontractor or vendor from bidding to any general contractor who does not use the facilities of or accept bids from or through such bid depository; and that the undersigned has not paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

**G. WORDS AND PHRASES**

Wherever in this bid an amount is stated in both words and figures, in case of discrepancy between words and figures, the words shall prevail; if all or any portion of the proposal is required to be given in unit prices and totals and a discrepancy exists between any such unit prices and totals so given, the unit prices shall prevail.

**H. CERTIFICATION**

The undersigned certifies that the Contract Documents have been thoroughly read and understood and that, except as may be specifically noted and contained in addenda, there are no discrepancies or misunderstandings as to the meaning, purpose or intent of any provision in the Contract Documents or as to the interpretation of the same. The undersigned hereby incorporates by reference, the same as though set out in full, all provisions of the Notice to Contractors and Information for Bidders published by Owner and pertaining to the work described in this bid.

Accompanying this bid is Bidder's Bond [insert words "cash", "cashier's check", "certified check", or "bidder's bond", as the case may be], in amount equal to at least 10% of total of the bid, naming the Owner as Obligee or Payee, as applicable.

The names of all persons interested in the foregoing bid as principals are as follows:

**IMPORTANT NOTICE:** If bidder or other interested person is a corporation, give legal name of corporation, state where incorporated and names of the president and secretary thereof; if a partnership, give name of the firm, also names of all individual co-partners composing firm; if bidder or other interested person is an individual, give first and last names in full.

Tucker Construction, Inc. CA, Mark Tucker President, and Secretary

**I. LICENSING**

The undersigned is licensed in accordance with State Law providing for the registration of Contractors, License No. 454738. [A class "A" or "B" California Contractor's License is required.] The License expiration date is 3/31/2024. No payment for work or material under this Contract will be made by Owner unless and until the Owner receives verification from the State Registrar of Contractors that the records of the Contractor's State License Board indicate the successful bidder was properly licensed at the time the Contract was awarded.

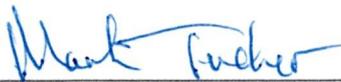
Any bidder not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, an appropriate disciplinary action by the Contractor's State License Board.

In addition, failure of the bidder to obtain and maintain proper and adequate licensing for the Contract shall constitute a failure to execute or perform this Contract and shall result in the forfeiture of the security of the bidder. The representations made herein are under penalty of perjury.

**NOTE:** If bidder is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the name of the firm shall be set forth below, together with the signatures of the partner or partners authorized to sign contracts in behalf of the co-partnership; and if bidder is an individual, his/her signature shall be placed below.

I declare under penalty of perjury that I have the authority to execute this bid form and that the foregoing is true and correct.

BIDDER: Tucker Construction, Inc  
(FIRM NAME)

SIGNATURE:  PRINTED NAME: Mark Tucker

TITLE: President DATE: May 18, 2023

ADDRESS / TELEPHONE / E-MAIL: 1725-D Little Orchard St San Jose CA 95125,  
408-287-1424, tucker@tuckercon.com

DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER:  
1000006784

## LIST OF SUBCONTRACTORS

In compliance with the provisions of §§4100-4107 of the Public Contracts Code of the State of California, and any amendments thereof, the undersigned bidder has set forth below the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the undersigned in or about the construction of the Work to be performed under the Contract Documents to which the attached bid is responsive, or of a person who will, off the job site, specially fabricate a portion of the Work or improvement according to detailed drawings contained in the Contract Documents, and the portion of the Work which will be done by each such subcontractor or person that will be in an amount in excess of ½ of 1% of the prime Contractor's total bid, or \$10,000, whichever is greater. Prime Contractor shall list the California Department of Industrial Relations (DIR) number for all subcontractors working on the project.

SUBCONTRACTOR	DESCRIPTION OF WORK	COST OF WORK	BUSINESS ADDRESS	DIR#
Associated Plumbing	Plumbing	48,400	90 Leavesley Rd Gilroy CA 95020	1000014984
MEB Electric	Electrical	8,140	3612 Virgin Island Ct Pleasanton CA 94588	1000537511
Pro Door & Glass	Doors	8,650	1677 Little Orchard St San Jose CA 95125	1000015207
SSS Fire Protection	Fire Protection	2,300	PO Box 320041 Los Gatos CA 95032	1000052533
Elements Manufacturing	Cabinetry	10,200	115 Harvey West Blvd Santa Cruz CA 95060	1000019794

  
 Bidder's Signature

## BIDDER'S BOND

### KNOW ALL PERSONS BY THESE PRESENTS:

That we, Tucker Construction, Inc. as Principal, and Markel Insurance Company as Surety, are held and firmly bound unto the Town of Los Gatos, a municipal corporation of the State of California (hereinafter called "Town") in the penal sum of 10% of the total aggregate amount of the bid of the Principal above named, submitted by said Principal to the Town for the Project listed below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the Surety hereunder exceed the sum of Ten Percent (10%) of the Amount Bid (\$-----) dollars.

### CIP #421-821-2601-82303 FY 2022/23 ADULT RECREATION CENTER ADA COMPLIANT PUBLIC RESTROOM

The condition of this obligation is such that a bid to the Town for this project, for which bids are to be opened on **Thursday, May 18, 2023 at 2:00 p.m.**, has been submitted by Principal to Town:

**BID TOTAL:** 249,490<sup>00</sup>

The quantities shown on the bid form are approximate only, being given as a basis for the comparison of bids, and the Owner does not, expressly or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount or class or portion of the work as may be deemed necessary or advisable by the Director of Parks & Public Works.

NOW THEREFORE, if the Principal is awarded the Contract and within the time and manner required under the Specifications, after the prescribed forms are presented to the Principal for signature, enters into a written contract, in the prescribed form, in accordance with the bid, and files 2 bonds with the Town, to guarantee faithful performance of the Contract and to guarantee payment for labor and materials as provided by law as well as files insurance certificates and equal employment opportunity documentation required under the bid, then this obligation shall be null and void; otherwise, it shall remain in full force.

In the event suit is brought upon said bond by Town, and judgment is recovered, the Surety shall pay all costs incurred by Town in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 15th day of May, 2023.

**PRINCIPAL:**

**SURETY:**

Tucker Construction, Inc.  
(Seal)

Markel Insurance Company  
(Seal)

(Seal)

(Seal)

Mark Tucker  
(Seal) (Principal) Mark Tucker

Mary Baez  
(Seal) (~~Principal~~) Mary Baez, Attorney-in-Fact

1725-D Little Orchard Street  
(Address)

3131 Camino del Rio North, Suite 140  
(Address)

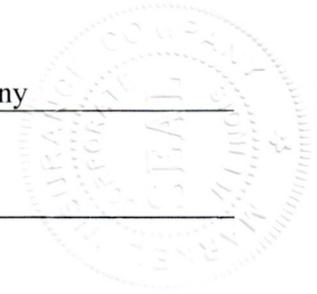
San Jose, CA 95125  
(City, State, Zip)

San Diego, CA 92108  
(City, State, Zip)

408-287-1424  
(Phone Number)

619-400-4101  
(Phone Number)

NOTE: Attach Notary Acknowledgment for signatures of those executing for **PRINCIPAL** (owner) and **SURETY**.



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Mateo )  
On 5/15/23 before me, Deborah M. Knipp, Notary Public,  
Date Here Insert Name and Title of the Officer  
personally appeared Mary Baez  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Deborah M. Knipp  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

# JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Mary Baez, Gregory D. McCartney, Sylvia McGovern, Steve S. Suissa

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifteen Million and 00/100 Dollars (\$15,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 1st day of December, 2022.

SureTec Insurance Company

By: [Signature]  
Michael C. Keimig, President



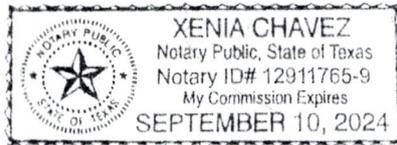
Markel Insurance Company

By: [Signature]  
Undey Jennings, Vice President

State of Texas  
County of Harris:

On this 1st day of December, 2022 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



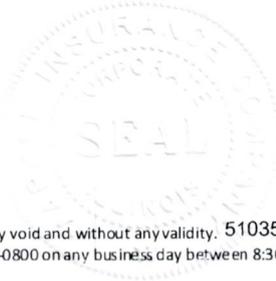
By: [Signature]  
Xenia Chavez, Notary Public  
My commission expires 9/10/2024

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 15th day of May, 2023.

SureTec Insurance Company

By: [Signature]  
M. Brent Beaty, Assistant Secretary



Markel Insurance Company

By: [Signature]  
Andrew Marquis, Assistant Secretary

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Santa Clara }

On May 17th, 2023 before me, Andres Hernandez,  
(Here insert name and title of the officer)

personally appeared Mark Tucker,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

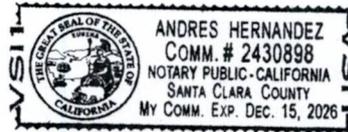
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

Notary Public Signature

(Notary Public Seal)



### ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT  
\_\_\_\_\_  
(Title or description of attached document)  
\_\_\_\_\_  
(Title or description of attached document continued)  
Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer  
\_\_\_\_\_  
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other \_\_\_\_\_

### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/~~she~~/~~they~~, ~~is~~ /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.