STAFF REPORT

MEETING
DATE: September 26, 2017

TO: City Council

FROM: Chris Blunk, Deputy Public Works Director/City Engineer

PRESENTER: Chris Blunk, Deputy Public Works Director/City Engineer

SUBJECT: ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO:

- TERMINATE THE EXISTING CONTRACT BETWEEN THE CITY OF NOVATO AND BRENEMAN INC. FOR CONSTRUCTION OF THE BAHIA MINI PARKS CIP PROJECT #15-004
- EXECUTE A THREE-PARTY TENDER AGREEMENT WITH MCNABB CONSTRUCTION AND AMERICAN CONTRACTORS INDEMNITY COMPANY
- EXECUTE A CONSTRUCTION CONTRACT WITH MCNABB CONSTRUCTION TO COMPLETE THE REMAINING WORK ON THE BAHIA MINI PARKS CIP PROJECT

REQUEST

Adopt a resolution authorizing the City Manager and City Attorney to:

1. Terminate the existing contract between the City of Novato and Breneman Inc. for construction of the Bahia Mini Parks Improvements CIP Project #15-004.
2. Negotiate final payment from Surety to City for the difference between the Remaining Contract Balance of $67,849.17 and the Completion Cost of $145,250.00, as well as staff time and attorney fees, and execute a three-party tender agreement with McNabb Construction and American Contractors Indemnity Company.
3. Execute a Standard Construction Contract with McNabb Construction to complete the remaining work on the Bahia Mini Parks CIP Project #15-004.

DISCUSSION

The Bahia Mini Parks CIP Project (#15-004) has experienced several delays since work began in September of 2016 due to weather and contractor performance. In July 2017, the City Engineer filed a claim against Breneman, Inc. with their bonding company, American Contractors Indemnity Company (ACIC), for breach of contract, performance failures, and excessive delays on the Bahia Mini Parks construction contract. Breneman, Inc. has since notified the City that they are going out of business. ACIC has stepped in to fulfil their performance bond obligations to complete the work on the Bahia Mini Parks project.
Since July, the City’s claim has been validated by ACIC, the remaining scope of work has been documented and agreed-to by all parties, ACIC has identified McNabb Construction as a replacement contractor to complete the work, and a three-party legal agreement has been drafted for the new contractor to repair substandard work and complete what Breneman, Inc. started at no additional cost to the City. ACIC, McNabb, and the City are in agreement on the payment for the physical work to be performed and terms and conditions of the legal agreement.

The City has also requested that additional payment be made by ACIC for staff time and attorney fees associated with the termination of the Original Contract, review and approval of a three-party Tender Agreement, and the execution and administration of a construction contract with McNabb Construction to complete the work on the project. ACIC and City staff are currently negotiating this additional payment to the City, which could be up to an additional $20,000.

In the interest of executing the required legal agreements for the takeover of the remaining work on the Bahia Mini Parks project in an expedient manner, staff request that the City Manager and City Attorney be granted the authority to negotiate the remaining additional payment to the City for staff time and attorney fees, then execute the agreements. This will allow the new contractor to resume work on the project as soon as possible. Alternatively, staff would need to return to City Council with the final agreements for approval on October 10th—a two week delay.

In order to continue construction on the Bahia Mini Parks project, the following interdependent actions must be taken:

1) The City must terminate the current contract between the City Of Novato and Breneman, Inc. for construction of the Bahia Mini Parks CIP Project #15-004.
2) The City must execute a three-party tender agreement with McNabb Construction and American Contractors Indemnity Company.
3) The City must execute a standard construction contract with McNabb Construction to complete the remaining work on the Bahia Mini Parks CIP Project #15-004.

The remaining scope of work on the contract includes completion of “Park B” across from Malobar Dr. including soil amendment, new sod turf, new irrigation systems, and new crushed granite path. Work will also include completion of unfinished or substandard work at “Park C” across from Andale Ave. such as diagnostic testing and repairs to the new irrigation system, replacement of dead plants, placement of site amenities like bike racks and picnic tables, and completion of the crushed granite strip between the sidewalk and Topaz Dr.

The three party Tender Agreement commits McNabb Construction to completing the remaining work on the Bahia Mini Parks project according to the contractual obligations of Breneman, Inc. and their performance bond. As the original contract was a lump sum contract, the new contract to complete the remaining work will also be a lump sum contract. The original bonding company, ACIC, is required to pay the difference between the remaining work on the original contract and the cost to complete the work on the new contract so there will be no additional cost to the city to complete the work.

Once these actions have been taken, McNabb Construction will resume work on the Bahia Mini Parks project. Work on the parks is expected to resume in early October and will likely take three to four weeks to complete.
FISCAL IMPACT

The remaining work on the Bahia Mini Parks contract with Breneman, Inc. has been determined to be valued at a lump sum of $67,849.17. McNabb Construction has provided a lump sum quote to ACIC to complete the remaining work on the Bahia Mini Parks contract for $145,250.00. ACIC will write a check in the amount of at least $77,400.83 to the City of Novato to cover the price difference to complete the remaining work. This payment to the City may be increased through ongoing negotiations toward $97,400.83 for City staff time and attorney fees required to process the termination and takeover of the construction contract.

The result is that there will be no additional cost to the city to complete the contractual work on the Bahia Mini Parks project.

RECOMMENDATION

Staff recommend that the City Council authorize the City Manager to simultaneously terminate the current contract between the City Of Novato and Breneman, Inc., finalize negotiations and execute a three-party tender agreement with McNabb Construction and American Contractors Indemnity Company, and execute a standard construction contract with McNabb Construction to complete the remaining work on the Bahia Mini Parks project.

ALTERNATIVE

1. Direct staff as to other action requested.

ATTACHMENTS

1. Draft Resolution
2. Tender Agreement between the City of Novato, American Contractors Indemnity Company, and McNabb Construction.
   - Exhibit A: Original Construction Contract with Breneman, Inc.
   - Exhibit B: Contractor’s Proposal for the Budget
ATTACHMENT 1

CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ________

A RESOLUTION OF THE CITY OF NOVATO AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO TERMINATE THE EXISTING CONTRACT BETWEEN THE CITY OF NOVATO AND BRENEMAN INC. FOR CONSTRUCTION OF THE BAHIA MINI PARKS CIP PROJECT #15-004, EXECUTE A THREE-PARTY TENDER AGREEMENT WITH MCNABB CONSTRUCTION AND AMERICAN CONTRACTORS INDEMNITY COMPANY, AND EXECUTE A CONSTRUCTION CONTRACT WITH MCNABB CONSTRUCTION TO COMPLETE THE REMAINING WORK ON THE BAHIA MINI PARKS CIP PROJECT #15-004.

WHEREAS, on or about August 4, 2016, the City of Novato (the “City”) and Former Contractor, Breneman, Inc. (“Former Contractor”) entered into an Agreement (the “Original Contract”) requiring Former Contractor to furnish all labor and material and perform all work for the work of improvement generally described as the Bahia Mini Parks Improvement (hereinafter “Project”) in accordance with the terms and provisions of the Original Contract, including all contract documents forming a part of the Original Contract, in the amount of $206,960.00. A copy of the Original Contract is attached hereto as Exhibit “A” and is incorporated herein by this reference; and

WHEREAS, on or about July 21, 2016, as required under the terms of the Original Contract, Former Contractor and the Surety made, executed and delivered to the City a Performance Bond No. 1001062113 (the “Performance Bond”) in the penal sum of $206,960.00 and a Labor and Materialmen’s Bond No. 1001062113 (the “Payment Bond”), in the penal sum of $206,960.00 (collectively, the “Bonds”); and

WHEREAS, on or about July 13, 2017, the City made a claim against the Performance Bond due to the Former Contractor’s performance failures and breaches of contract, including but not limited to Former Contractor failing to perform work since May 26, 2017, unresponsiveness to letters from City requesting a completion schedule, requesting project site maintenance and noticing of liquidated damages charges for delay to contract. As of the date of Former Contractor’s failure to perform work on the Project and abandonment of the Project, work remains to be performed under the Original Contract; and
WHEREAS, the Surety acknowledged its obligation to fulfill its responsibilities under the Performance Bond, and has agreed to tender a completion contractor to complete the work under the Original Contract to the City; and

WHEREAS, City has approved change orders numbered one through five in the amount of $12,027.19; adjusting the contract amount to $218,987.19; and

WHEREAS, City has paid Former Contractor the sum of $151,138.02, leaving a contract balance under the Original Contract, including approved change orders, in the sum of $67,849.17 (the “Remaining Contract Balance”); and

WHEREAS, in accordance with Surety’s obligations under the Bonds and subject to the terms and conditions of this Agreement, Surety will tender McNabb Construction Inc. (“Completion Contractor”) to City to complete the remaining uncompleted portion of the Original Contract for the amount of $77,400.83 (“Completion Cost”), and City has agreed to accept the tender of the Completion Contractor and commits itself to complete the work set forth in the Original Contract upon the terms and conditions set forth in the Original Contract just as though Completion Contractor had been Former Contractor in the first instance. A copy of the Completion Contractor’s Proposal for the Project dated August 25, 2017 showing the Completion Cost of $145,250.00 is attached hereto as Exhibit “B” and is incorporated herein by this reference; and

WHEREAS, City and Surety are still negotiating additional payment from Surety to City for staff time and attorney fees associated with the termination of the Original Contract, review and approval of a three-party Tender Agreement, execution of a construction contract with Completion Contractor, and administration of the contract with Completion Contractor to complete the work of the Original Contract; and

WHEREAS, Completion Contractor has agreed to provide all bonds and insurance required pursuant to the terms of the Original Contract; and

WHEREAS, Surety has agreed to remain liable under its Payment Bond for any valid obligations incurred by the Former Contractor to its subcontractors, laborers, trusts to which fringe benefit contributions are owed on behalf of laborers who were employed by the Contractor and who supplied labor for use on the Project and/or suppliers in performing work under the Original Contract. The liability of Surety under the Payment Bond remains unaffected by this Agreement, and Surety retains all obligations, rights and defenses pursuant to the Payment Bond; and

WHEREAS, notwithstanding the provisions of the Performance Bond, Surety and City have agreed to settle City’s claim under the Performance Bond with payment of at least $77,400.83, such sum representing the difference between the Remaining Contract Balance of $67,849.17 and the Completion Cost of $145,250.00. Surety’s payment to City may be increased to include payment for City staff time and attorney fees. In consideration of the tender of at least $77,400.83 by Surety, City has agreed to release and forever discharge Surety from any and all obligations it might have to City under the Performance Bond; and
NOW, THEREFORE, BE IT RESOLVED that the City of Novato hereby:

1. Authorizes the City Manager and City Attorney to terminate the existing contract between the City of Novato and Breneman Inc. for construction of the Bahia Mini Parks Improvements CIP Project #15-004.

2. Authorizes the City Manager and City Attorney to negotiate final payment from Surety to City for the difference between the Remaining Contract Balance of $67,849.17 and the Completion Cost of $145,250.00, as well as staff time and attorney fees, and execute a three-party tender agreement with McNabb Construction and American Contractors Indemnity Company.

3. Authorizes the City Manager and City Attorney to execute a Standard Construction Contract with McNabb Construction to complete the remaining work on the Bahia Mini Parks CIP Project #15-004.

* * * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 26th day of September, 2017, by the following vote, to wit:

AYE: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

______________________________
City Clerk of the City of Novato

Approved as to form:

______________________________
City Attorney of the City of Novato
AGREEMENT

THIS AGREEMENT is entered into as of the 1st day of August, 2014 by and between the City of Novato, a municipal corporation, County of Marin, State of California, hereinafter called the "City," and

Breneman Inc

hereinafter called the "Contractor."

1. WORK. For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the conditions expressed in the two bonds bearing even date with these presents, and hereunto annexed, the Contractor agrees with the City at the Contractor's own proper cost and expense to do all the work and furnish all the materials, except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good, workmanlike, and substantial manner, and to the satisfaction of the City Council of the City of Novato the work described in the special provisions and the project plans described below, including any addenda thereto, and also in accordance with the Department of Transportation Standard Specifications and Plans dated May 2010, the Uniform Construction Standards of the Cities and County of Marin, the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the General Prevailing Wage Rates incorporated into the special provisions. The project specifications, project plans, Standard Plans, Standard Specifications, Labor Surcharge and Equipment Rental Rates, and General Prevailing Wage Rates are hereby specially referred to and by such reference made a part hereof.

The project specifications are entitled:

Bahia Mini Parks Improvements

The project plans for the work to be done are entitled:

Bahia Mini Parks Improvements

2. TERMS AND CONDITIONS. The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices set forth in the Contractor's proposal dated June 30, 2016, and hereby contracts to pay the same at the time, in the manner, and upon the conditions herein 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. The Contractor shall warrant all work performed under this contract for a one (1) year period commencing upon acceptance of the final work.
3. **WAGES.** The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this 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. Notwithstanding anything to the contrary stated herein or in any of the writings specified in paragraph 1, above, the work covered by this agreement is a “public work” as defined in chapter 1, Part 7 of Division 2 of the California Labor Code.

4. **WORKERS COMPENSATION.** By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

5. **PRICES.** The Contractor agrees to receive and accept the prices set forth in the Contractor’s bid in the amount of $206,960.00, as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City Council of the City of Novato, and for all risks of every description connected with the work; also, for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the City Engineer of the City of Novato.

6. **ATTORNEY’S FEES.** California Civil Code Section 1717 permits the parties to a contract to determine if attorney’s fees shall be recoverable in any dispute, conflict, or controversy between the parties arising out of the terms of the agreement or either party’s performance or alleged failure to perform or keep any term, covenant, or condition of the agreement. The parties expressly decline to include an attorney’s fees clause in this contract. Notwithstanding anything to the contrary stated in this Agreement or stated in those documents incorporated by reference into section 1 of this Agreement (hereinafter referred to as “contract documents”), Labor and Materials Bonds, Performance Bonds, Bid Bonds, and Guaranty, neither party to this Agreement shall be entitled to recover attorney’s fees as a prevailing party under: 1) California Civil Code Section 1717; 2) any other provision of the law that permits parties to determine when attorney fees may be recovered; and/or 3) any other provision of the contract documents pertinent to the work to be performed under this Agreement in any claim, suit, action, or other formal or informal proceeding arising out of, or connected with, this Agreement, this Project or Contractor’s performance hereunder. Notwithstanding the foregoing, nothing herein stated shall modify or affect the indemnification provisions (or the right to recover attorney’s fees in enforcing said indemnification provisions) of the special provisions or other provisions of the contract documents, pertinent to the work to be performed under this Agreement, nor shall any of the provisions of this section apply to any action that seeks to enforce any provision

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of the Bid Bond(s), Performance Bond(s), Labor and Materials Bond(s), or any other bond(s), guarantee, or instrument of credit issued in favor of the City to assure or pay for Contractor's performance under this Agreement. Should any action be filed that seeks to enforce: 1) any provision of the above-referenced bonds, guarantee, or instrument of credit; and 2) any provision of this Agreement, the contract documents and/or special or other provisions incorporated into this Agreement (with the exception of indemnification provisions described in this section), a prevailing party shall only be entitled to recover those attorney's fees that were expended to enforce the provisions of the documents specified in sub-paragraph 1) referenced hereinabove (i.e., bonds, guarantee, or instrument of credit) and not the provisions of the documents specified in sub-paragraph 2) referenced hereinabove.

IN WITNESS WHEREOF, the said City of Novato has, by order of its City Council by Ordinance No. 171, caused these presents to be subscribed by the City Manager and the seal of said City to be affixed and attested by the City Clerk, and the said Contractor has subscribed his name hereto the day and year first above written.

CITY OF NOVATO

[Signature]
City Manager

Approved as to form:

[Signature]
Asst. City Attorney

8/4/16
Date

ATTEST:

[Signature]
Deputy City Clerk

CONTRACTOR

[Signature]
By

Licensed in accordance with an act providing for the registration of contractors:

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Federal Employer Identification No. 26-4100852
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**TOTALS** | | | | **$145,250.00** |
AGREEMENT

This AGREEMENT (the “Agreement”) is made and entered into by and between the American Contractors Indemnity Company (“Surety”), The City of Novato (“Owner”), and McNabb Construction Inc. (“Completion Contractor”) and is effective as of this ____ day of September, 2017 (“Effective Date”).

RECITALS:

WHEREAS, on or about August 4, 2016 Owner and Former Contractor, Breneman, Inc. (“Former Contractor”) entered into an Agreement (the “Original Contract”) requiring Former Contractor to furnish all labor and material and perform all work for the work of improvement generally described as the Bahia Mini Parks Improvement (hereinafter “Project”) in accordance with the terms and provisions of the Original Contract, including all contract documents forming a part of the Original Contract, in the amount of $206,960.00. A copy of the Original Contract is attached hereto as Exhibit “A” and is incorporated herein by this reference;

WHEREAS, on or about July 21, 2016, as required under the terms of the Original Contract, Former Contractor and the Surety made, executed and delivered to the Owner a Performance Bond No. 1001062113 (the “Performance Bond”) in the penal sum of $206,960.00 and a Labor and Materialmen’s Bond No. 1001062113 (the “Payment Bond”), in the penal sum of $206,960.00 (collectively, the “Bonds”);

WHEREAS, on or about July 13, 2017, the Owner made a claim against the Performance Bond due to the Former Contractor’s performance failures and breaches of contract, including but not limited to Former Contractor failing to perform work since May 26, 2017, unresponsiveness to letters from Owner requesting a completion schedule, requesting project site maintenance and noticing of liquidated damages charges for delay to contract. As of the date of Former Contractor’s failure to perform work on the Project and abandonment of the Project, work remains to be performed under the Original Contract;

WHEREAS, the Surety acknowledged its obligation to fulfill its responsibilities under the Performance Bond, and has agreed to tender a completion contractor to complete the work under the Original Contract to the Owner;

WHEREAS, Owner has approved change orders numbered one through five in the amount of $12,027.19; adjusting the contract amount to $218,987.19;

WHEREAS, Owner has paid Former Contractor the sum of $151,138.02, leaving a contract balance under the Original Contract, including approved change orders, in the sum of $67,849.17 (the “Remaining Contract Balance”);

WHEREAS, in accordance with Surety’s obligations under the Bonds and subject to the terms and conditions of this Agreement, Surety will tender McNabb Construction Inc. (“Completion Contractor”) to Owner to complete the remaining uncompleted portion of the Original Contract for the amount of $77,400.83 (“Completion Cost”), and Owner has agreed to accept the tender of the Completion Contractor and commits itself to complete the work set forth in the Original Contract upon the terms and conditions set forth in the Original Contract just as
though Completion Contractor had been Former Contractor in the first instance. A copy of the Completion Contractor’s Proposal for the Project dated August 25, 2017 showing the Completion Cost of $145,250.00 is attached hereto as Exhibit “B” and is incorporated herein by this reference;

WHEREAS, Completion Contractor has agreed to provide all bonds and insurance required pursuant to the terms of the Original Contract;

WHEREAS, Surety has agreed to remain liable under its Payment Bond for any valid obligations incurred by the Former Contractor to its subcontractors, laborers, trusts to which fringe benefit contributions are owed on behalf of laborers who were employed by the Contractor and who supplied labor for use on the Project and/or suppliers in performing work under the Original Contract. The liability of Surety under the Payment Bond remains unaffected by this Agreement, and Surety retains all obligations, rights and defenses pursuant to the Payment Bond;

WHEREAS, notwithstanding the provisions of the Performance Bond, Surety and Owner have agreed to settle Owner’s claim under the Performance Bond with payment of $77,400.83, such sum representing the difference between the Remaining Contract Balance of $67,849.17 and the Completion Cost of $145,250.00. In consideration of the tender of $77,400.83 by Surety, Owner has agreed to release and forever discharge Surety from any and all obligations it might have to Owner under the Performance Bond;

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy being acknowledged, the Owner, and Surety agree as follows:

AGREEMENTS

1. The above Recitals are hereby incorporated by reference into the Terms and Conditions of this Agreement.

2. Surety agrees to pay to the Owner the sum of $77,400.83 in full settlement of the claim of the Owner under the Performance Bond upon execution of this Agreement and delivery of the check in the amount of $77,400.83, such sum representing the difference between the Remaining Contract Balance of $67,849.17 and the Completion Cost of $145,250.00, for Owner to use to complete the Project pursuant to the terms of the Original Contract.

3. Owner and Surety agree, upon execution of this Agreement and full execution of a contract with Completion Contractor as set forth in Paragraph 4 below, to release, acquit and forever discharge each other and their successors and assigns from any and all claims, rights, demands and/or causes of action of whatever kind or nature which Owner or Surety has or may ever claim to have, now or in the future, against each other under and/or by reason of the Performance Bond. Notwithstanding the foregoing release, nothing herein shall be construed to constitute a release of Former Contractor’s obligations under that certain General Agreement of Indemnity (“Indemnity Agreement”) executed by Former Contractor for the benefit of Surety, nor shall this Agreement be construed to constitute any sort of cancellation, termination or modification of the Indemnity Agreement. Moreover, nothing in this Agreement shall be
construed to constitute a release of Owner’s or Former Contractor’s rights to pursue any appropriate action against each other.

4. Owner and Completion Contractor agree to enter into a separate agreement to complete the remaining uncompleted portion of the Original Contract for the amount of $145,250.00 (“Completion Cost”). Completion Contractor agrees it is substituted for Former Contractor in the Original Contract such that Completion Contractor’s relationship to the Owner is the same as if Completion Contractor were the original contracting party with the Owner in lieu of Former Contractor. Completion Contractor shall provide all bonds and insurance required pursuant to the terms of the Original Contract and shall warranty and guarantee the work of the Former Contractor which was performed pursuant to the Original Contract.

5. Surety acknowledges and agrees that its Payment Bond previously furnished for the Project shall continue to remain in full force and effect, except that it is expressly agreed by and between the Owner and Surety that the scope and coverage of said Payment Bond shall be limited to and shall only apply to statutory claims for payment by subcontractors and/or suppliers of Former Contractor for work performed and/or materials delivered prior to the termination of the Original Contract due to Former Contractor’s default and its abandonment of the Project. The liability of Surety under the Payment Bond remains unaffected by this Agreement, and Surety retains all obligations, rights and defenses pursuant to the Payment Bond.

6. This Agreement is solely for the benefit of Owner, Surety, and Completion Contractor. Owner, Surety, and Completion Contractor do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than Owner, Surety, and Completion Contractor. Specifically, Owner, Surety, and Completion Contractor acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of Surety under the Bonds.

7. This Agreement constitutes the whole of the understanding, discussions, and agreements by and between Owner and Surety. The terms and provisions of this Agreement are contractual and not mere recitals. Owner and Surety acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.

8. This Agreement shall not be changed, amended or altered in any way except in writing and executed by Owner, Surety, and Completion Contractor.

9. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

10. This Agreement shall be governed by and controlled by the laws of the state of California.

11. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:
As to the Owner:

Via U.S. Mail and Electronic Mail to:

City of Novato  
922 Machin Ave.  
Novato, CA 94945  
Attention: Christopher Blunk  
E-mail: cblunk@novato.org

As to the Surety:

Via U.S. Mail and Electronic Mail to:

American Contractors Indemnity Company  
801 S. Figueroa Street, Suite 700  
Los Angeles, CA 90017  
Attention: Paul Guelpa  
E-mail: pguelpa@tmhcc.com

As to the Completion Contractor:

Via U.S. Mail and Electronic Mail to:

McNabb Construction, Inc.  
3527 Mt Diablo Boulevard, #306  
Lafayette, CA 94549  
Attention: Dave McNabb  
E-mail: davemenabb@hotmail.com

12. This Agreement is effective as of the date first written above.

13. This Agreement shall be binding upon the parties and their respective successors and assigns.

14. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal or unenforceable in any respect, unless such invalidity, illegality or unenforceability shall be tantamount to a failure of consideration, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.

15. It is understood and agreed by Owner, Surety, and Completion Contractor that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have
the full right, power and authority to execute this Agreement on behalf of the respective parties.

Dated: September ___, 2017

AMERICAN CONTRACTORS INDEMNITY COMPANY
(Surety)

By: ____________________________

Title: __________________________

Dated: September ___, 2017

THE CITY OF NOVATO
(Owner)

By: ____________________________

Title: __________________________

Dated: September ___, 2017

MCNABB CONSTRUCTION INC.
(Completion Contractor)

By: ____________________________

Title: __________________________
AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of ____________, by and between the City of Novato, a municipal corporation, County of Marin, State of California, hereinafter called the “City,” and McNabb Construction, Inc., hereinafter called the “Contractor.”

RECITALS

WHEREAS, on August 4, 2016 City and Former Contractor, Breneman, Inc. ("Former Contractor") entered into an Agreement (the “Original Contract”) requiring Former Contractor to furnish all labor and material and perform all work for the work of improvement generally described as the Bahia Mini Parks Improvement (hereinafter “Project”) in accordance with the terms and provisions of the Original Contract, including all contract documents forming a part of the Original Contract, in the amount of $206,960.00. A copy of the Original Contract is attached hereto as Exhibit “A” and is incorporated herein by this reference; and

WHEREAS, on July 21, 2016, as required under the terms of the Original Contract, Former Contractor and their Surety made, executed and delivered to the City a Performance Bond No. 1001062113 (the “Performance Bond”) in the penal sum of $206,960.00 and a Labor and Materialmen’s Bond No. 1001062113 (the “Payment Bond”), in the penal sum of $206,960.00 (collectively, the “Bonds”); and

WHEREAS, on July 13, 2017, the City made a claim against the Performance Bond due to the Former Contractor’s performance failures and breaches of contract, including but not limited to Former Contractor failing to perform work since May 26, 2017, unresponsiveness to letters from Owner requesting a completion schedule, requesting project site maintenance and noticing of liquidated damages charges for delay to contract. As of the date of Former Contractor’s failure to perform work on the Project and abandonment of the Project, work remains to be performed under the Original Contract; and

WHEREAS, the Former Contractor’s Surety acknowledged its obligation to fulfill its responsibilities under the Performance Bond, and has agreed to tender a completion contractor to complete the work under the Original Contract to the City; and

WHEREAS, the City has approved change orders numbered one through five in the amount of $12,027.19; adjusting the contract amount to $218,987.19; and

WHEREAS, the City has paid Former Contractor the sum of $151,138.02, leaving a contract balance under the Original Contract, including approved change orders, in the sum of $67,849.17 (the “Remaining Contract Balance”); and

WHEREAS, in accordance with the Former Contractor’s Surety’s obligations under the Bonds and subject to the terms and conditions of this Agreement, Former Contractor’s Surety will tender Contractor to City to complete the remaining uncompleted portion of the Original Contract for the amount of $77,400.83 (“Completion Cost”), and the City has agreed to accept the tender of the Contractor and commits itself to complete the work set forth in the Original Contract upon the terms and conditions set forth in the Original Contract just as though Contractor had been Former Contractor in the first instance. A copy of the Contractor’s Proposal for the Project dated August 25, 2017 showing the Completion Cost of $145,250.00 is attached hereto as Exhibit “B” and is incorporated herein by this reference; and
WHEREAS, Contractor has agreed to provide all bonds and insurance required pursuant to the terms of the Original Contract; and

WHEREAS, Former Contractor’s Surety has agreed to remain liable under its Payment Bond for any valid obligations incurred by the Former Contractor to its subcontractors, laborers, trusts to which fringe benefit contributions are owed on behalf of laborers who were employed by the Contractor and who supplied labor for use on the Project and/or suppliers in performing work under the Original Contract. The liability of Former Contractor’s Surety under the Payment Bond remains unaffected by this Agreement, and Former Contractor’s Surety retains all obligations, rights and defenses pursuant to the Payment Bond;

NOW THEREFORE, BE IT RESOLVED, Contractor is acknowledged to complete the remaining of the contract per the following conditions:

AGREEMENTS

1. WORK. For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City and under the conditions expressed in the two bonds bearing even date with these presents, and hereunto annexed, the Contractor agrees with the City at the Contractor’s own proper cost and expense to do all the work and furnish all the materials, except such as are mentioned in the specifications to be furnished by the City, necessary to construct and complete in a good, workmanlike, and substantial manner, and to the satisfaction of the City Council of the City of Novato the work described in the special provisions and the project plans described below, including any addenda thereto, and also in accordance with the Department of Transportation Standard Specifications and Plans dated May 2010, the Uniform Construction Standards of the Cities and County of Marin, the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the General Prevailing Wage Rates incorporated into the special provisions. The project special provisions, project plans, Standard Plans, Standard Specifications, Labor Surcharge and Equipment Rental Rates, and General Prevailing Wage Rates are hereby specially referred to and by such reference made a part hereof.

The project special provisions are entitled:

**Bahia Mini Parks Improvements, CIP Project No. 15-004**

The project plans are entitled:

**Bahia Mini Parks Improvements, CIP Project No. 15-004**
2. TERMS AND CONDITIONS. The City hereby promises and agrees with the Contractor to employ, and does hereby employ, the Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices set forth in the Contractor’s proposal dated August 25, 2017, and hereby contracts to pay the same at the time, in the manner, and upon the conditions herein 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.

3. WAGES. The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there by 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. Notwithstanding anything to the contrary stated herein or in any of the writings specified in paragraph 1, above, the work covered by this agreement is a “public work” as defined in chapter 1, Part 7 of Division 2 of the California Labor Code.

4. WORKERS COMPENSATION. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

5. PRICES. The Contractor agrees to receive and accept the prices set forth in the Contractor’s proposal dated August 25, 2017, as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City Council of the City of Novato, and for all risks of every description connected with the work; also, for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the City Engineer of the City of Novato.

6. ATTORNEY’S FEES. California Civil Code Section 1717 permits the parties to a contract to determine if attorney’s fees shall be recoverable in any dispute, conflict, or controversy between the parties arising out of the terms of the agreement or either party’s performance or alleged failure to perform or keep any term, covenant, or condition of the agreement. The parties expressly decline to include an attorney’s fees clause in this contract. Notwithstanding anything to the contrary stated in this Agreement or stated in those documents incorporated by reference into section 1 of this Agreement (hereinafter referred to as “contract documents”), Labor and Materials Bonds, Performance Bonds, Bid Bonds, and Guaranty, neither party to this Agreement shall be entitled to recover attorney’s fees as a prevailing party under: 1) California Civil Code Section 1717; 2) any other provision of the law that permits parties to determine when attorney fees may be recovered; and/or 3) any other provision of the contract documents pertinent to the work to be performed under this Agreement in any claim, suit, action, or other formal or informal proceeding arising out of, or connected with, this Agreement, this Project or Contractor’s performance hereunder. Notwithstanding the foregoing, nothing herein stated shall modify or affect the indemnification provisions (or the right to recover attorney’s fees in enforcing said indemnification provisions) of the special provisions or other provisions of the contract documents, pertinent to the work to be performed under this Agreement, nor shall any of the provisions of this section apply to any action that seeks to enforce any provision of the Bid Bond(s), Performance Bond(s), Labor and Materials Bond(s), or any other bond(s),
guarantee, or instrument of credit issued in favor of the City to assure or pay for Contractor’s performance under this Agreement. Should any action be filed that seeks to enforce: 1) any provision of the above-referenced bonds, guarantee, or instrument of credit; and 2) any provision of this Agreement, the contract documents and/or special or other provisions incorporated into this Agreement (with the exception of indemnification provisions described in this section), a prevailing party shall only be entitled to recover those attorney’s fees that were expended to enforce the provisions of the documents specified in sub-paragraph 1 referenced hereinabove (i.e., bonds, guarantee, or instrument of credit) and not the provisions of the documents specified in sub-paragraph 2 referenced hereinabove.

7. **WARRANTY.** Contractor agrees it is substituted for Former Contractor in the Original Contract such that Contractor’s relationship to the City is the same as if Completion Contractor were the original contracting party with the City in lieu of Former Contractor. Contractor shall provide all bonds and insurance required pursuant to the terms of the Original Contract and shall warranty and guarantee the work of the Former Contractor which was performed pursuant to the Original Contract.

IN WITNESS WHEREOF, the said City of Novato has, by order of its City Council by Ordinance No. 171, caused these presents to be subscribed by the City Manager and the seal of said City to be affixed and attested by the City Clerk, and the said Contractor has subscribed his name hereto the day and year first above written.

CITY OF NOVATO

_________________________________________________________  
City Manager

Approved as to form:

_________________________________________________________  
City Attorney

Date

ATTEST:

_________________________________________________________  
City Clerk

CONTRACTOR

By ______________________________

Licensed in accordance with an act providing for the registration of contractors:

License No. _______________________

Federal Employer Identification No. _____________________
# General Liability Endorsement

## (the “City”)

### POLICY INFORMATION

| Insurance Company: | Coverage is equivalent to (check one):
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Policy No.:</td>
<td>Comprehensive General Liability Form GL0002 (Ed 1/73)</td>
</tr>
<tr>
<td>Policy Period (from) (to)</td>
<td>Commercial General Liability “occurrence” Form CG0001 1185</td>
</tr>
<tr>
<td>Endorsement Effective Date:</td>
<td>Commercial General Liability “Claims Made” Form CG0002 0286</td>
</tr>
</tbody>
</table>
| Named Insured: | General Liability Aggregate (check one):
| Limit of Liability Any One Occurrence/Aggregate: | Applies per Location/Project |
| Deductible or Self-Insured Retention (Nil unless otherwise specified): | Is Twice the Occurrence Limit |

Bodily Injury and Property Damage Coverage is (check one):

- occurrence
- claims made

If claims made, the retroactive date is ____________

Note: The City’s standard insurance requirements specify “occurrence” coverage. “Claims-made” coverage requires special approval. If commercial general liability form or equivalent is used, the general aggregate must apply separately to this location/project or the general aggregate must be twice the occurrence limit.

### POLICY AMENDMENTS

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any other endorsement attached thereto, it is agreed as follows:

**INSURED:** The City, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured’s general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.

**CONTRIBUTIONS NOT REQUIRED.** As respects: (a) work performed by the Named Insured for or on behalf of the City; or (b) products sold by the Named Insured to the City; or (c) premises leased by the Named Insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its elected or appointed officers, officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the Named Insured’s scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its elected or appointed officers, officials, employees or volunteers shall be in excess of this insurance and shall not contribute with it.

**SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:

1. Insurance services office form number GL 0002 (Ed. 1/73), Comprehensive General Liability Insurance and Insurance Services Office Form Number GL 0404 Broad Form Comprehensive General Liability endorsement; or
2. Insurance Services Office Commercial General Liability Coverage, “occurrence” form CG 0001 or “claims-made” form CG 0002; or
3. If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding Sections (1) and (2).

**SEVERABILITY OF INTEREST.** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the company’s limit of liability.

**PROVISIONS REGARDING INSURED’S DUTIES AFTER ACCIDENT OR LOSS.** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its elected or appointed officers, officials, employees or volunteers.

**CANCELLATION NOTICE.** The insurance afforded by this policy shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail return receipt requested has been given to the City. Such notice shall be addressed as shown in the heading of this endorsement.

### INCIDENT AND CLAIM REPORTING PROCEDURE

Incidents and claims are to be reported to the insurer at:

**ATTN:** ____________________

(TITLE) (DEPARTMENT)

(COMPANY)

(STREET ADDRESS)

(CITY) (STATE) (ZIP CODE)

(Telephone Number)

### AUTHORIZED REPRESENTATIVE

I warrant that I have authority to bind the above-listed insurance company and by my signature hereon does so bind this company.

**SIGNATURE:** ____________________

**TYPE/PRINT NAME:** ____________________

**TITLE:** ____________________

**PHONE NO.:** ____________________

Original signature of authorized representative or insurer is required on endorsement furnished to the City.
### Automobile Liability Special Endorsement

**for (the “City”)**

<table>
<thead>
<tr>
<th>Producer</th>
<th>Policy Information:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insurance Company:</td>
</tr>
<tr>
<td></td>
<td>Policy No.:</td>
</tr>
<tr>
<td></td>
<td>Policy Period: (from) (to)</td>
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<tr>
<td></td>
<td>Loss Adjustment Expense</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Telephone:</th>
</tr>
</thead>
</table>

| Named Insured | Applicability. This insurance pertains to the operation and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered: |

**City Agreements/Permits**

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Other Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Commercial Auto Policy</td>
<td></td>
</tr>
<tr>
<td>☐ Business Auto Policy</td>
<td></td>
</tr>
<tr>
<td>☐ Other ____________</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Limits of Liability</th>
<th>Claims: Underwriter’s representative for claims pursuant to this insurance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>$___________ per accident for bodily injury and property damage</td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td>Telephone: (_______)</td>
<td></td>
</tr>
</tbody>
</table>

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **Insured.** The City, its officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired, or borrowed by the Named Insured, or for which the Named Insured is responsible.

2. **Contribution Not Required.** As respects work performed by the Named Insured for or on behalf of the City, the insurance afforded by this policy shall: (a) be primary insurance as respects the City, its officers, officials, employees and volunteers; or (b) stand in an unbroken chain of coverage excess of the Named Insured’s primary coverage. Any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall be excess of the Named Insured’s insurance and not contribute with it.

3. **Cancellation Notice.** With respect to the interests of the City, this insurance shall not be cancelled, except after thirty (30) days prior written notice by receipted delivery has been given to the City.

4. **Scope of Coverage.** This policy affords coverage at least as broad as:

   (1) If primary, Insurance Services Office Form Number CA0001 (Ed. 1/87), Code 1 (“any auto”); or
   (2) If excess, affords coverage which is at least as broad as the primary insurance forms referenced in the preceding Section (1).

Except as stated above, nothing herein shall be held to waive, alter, or extend any of the limits conditions, agreements, or exclusions of the policy to which this endorsement is attached.

### Endorsement Holder

**City**

<table>
<thead>
<tr>
<th>Authorized Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Broker/Agent ☐ Underwriter ☐ ____________</td>
</tr>
</tbody>
</table>

I, ___________________________(print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature ____________________________ (original signature required)

| Telephone: (_______) |
| Date Signed: ____________ |
## Workers’ Compensation and Employer’s Liability Special Endorsement

**for** (the “City”)  

<table>
<thead>
<tr>
<th>Producer</th>
<th>Policy Information:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insurance Company:</td>
</tr>
<tr>
<td></td>
<td>Policy No.:</td>
</tr>
<tr>
<td></td>
<td>Policy Period:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Telephone:</th>
<th>Endorsement No.</th>
<th>Issue Date (MM/DD/YY)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Named Insured</th>
<th>Other Provisions</th>
</tr>
</thead>
</table>

**Claims:** Underwriter’s representative for claims pursuant to this insurance.

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
</tr>
</thead>
</table>

| Telephone: | |

**Employer’s Liability Limits**

| $___________ | (Each Accident) |
| $___________ | (Disease - Policy Limit) |
| $___________ | (Disease - Each Employee) |

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, it is agreed as follows:

1. **Cancellation Notice.** This insurance shall not be cancelled, except after thirty (30) days prior written notice by receipted delivery has been given to the City.

2. **Waiver of Subrogation.** This Insurance Company agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of this policy which arise from the work performed by the Named Insured for the City.

Except as stated above, nothing herein shall be held to waive, alter, or extend any of the limits conditions, agreements, or exclusions of the policy to which this endorsement is attached.

**Endorsement Holder**

**City**

**Authorized Representative**

**Broker/Agent** □  **Underwriter** □  **[print/type name]**

I, [print/type name], warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

**Signature**  

*(original signature required)*

**Telephone:** ( )  

**Signed:** ________________  

**Date:** ________________
Certificate of Insurance

(the “City”)

<table>
<thead>
<tr>
<th>Producer</th>
<th>This Certificate of Insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies below.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>Letter A</td>
</tr>
<tr>
<td>Company</td>
<td>Letter B</td>
</tr>
<tr>
<td>Company</td>
<td>Letter C</td>
</tr>
<tr>
<td>Company</td>
<td>Letter D</td>
</tr>
<tr>
<td>Company</td>
<td>Letter E</td>
</tr>
</tbody>
</table>

This is to certify that the policies of insurance listed below have been issued to the Insured Named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein subject to all the terms, exclusions, and conditions of such policies. Limits shown may have been reduced by paid claims.

The following provisions apply:
1. None of the above-described policies will be cancelled until after 30 days written notice has been given to the City at the address indicated below.
2. The City, its officials, officers, employees and volunteers and added as insureds on all liability insurance policies listed above.
3. It is agreed that any insurance or self-insurance maintained by the City will apply in excess of and not to contribute with the insurance described above.
4. The City is named a loss payee on the property insurance policies described above, if any.
5. All rights of subrogation under the property insurance policies described above, if any.
6. The Workers’ Compensation insurer named above, if any, agrees to waive all rights of subrogation against the City for injuries to employees of the insured resulting from work for the City or use of the City’s premises or facilities.

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date</th>
<th>Policy Expiration Date</th>
<th>All Units in Thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability</td>
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<tr>
<td>Commercial General Liability</td>
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<tr>
<td>Claims Made</td>
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<td>Occur.</td>
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<tr>
<td>Owner’s &amp; Contractor’s Prot.</td>
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<tr>
<td>Owner</td>
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<tr>
<td>Automobile Liability</td>
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<tr>
<td>Any Auto</td>
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<tr>
<td>All Owned Autos</td>
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<tr>
<td>Scheduled Autos</td>
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<tr>
<td>Hired Autos</td>
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<tr>
<td>Non-owned Autos</td>
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<tr>
<td>Garage Liability</td>
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<tr>
<td>Excess Liability</td>
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<tr>
<td>Umbrella</td>
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<tr>
<td>Other Than Umbrella Form</td>
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<tr>
<td>Worker’s Compensation and Employer’s Liability</td>
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<tr>
<td>Statutory</td>
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<tr>
<td>Each Accident</td>
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<tr>
<td>Disease - Policy Limit</td>
<td></td>
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<tr>
<td>Disease - Each Employee</td>
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<tr>
<td>Property Insurance</td>
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<tr>
<td>Course of Construction</td>
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<tr>
<td>Certificate Holder/Additional Insured</td>
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</tbody>
</table>

Authorized Representative
Signature: ____________________________
Title: ________________________________
Phone No.: ____________________________
<table>
<thead>
<tr>
<th>City:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Project Identification:</td>
</tr>
<tr>
<td>Entity Providing Contractual Services:</td>
</tr>
<tr>
<td>Insurer(s):</td>
</tr>
<tr>
<td>Best Rating(s):</td>
</tr>
<tr>
<td>Name and Title of Underwriter, Broker or Agent completing Certification:</td>
</tr>
</tbody>
</table>

I, the undersigned insurance underwriter, broker or insurance agent, do hereby certify that I have examined the insurance specifications prepared by the City for the above-referenced project and have attached herewith company certificates of insurance and all endorsements specified in the insurance specifications.

I further certify that the coverages provided to the Contractor and described in the certificates of insurance and endorsements conform in all respects to the requirements set forth in the insurance specifications, including, but not limited to, the following considerations:

1. The scope of insurance is at least as broad as the minimum requirements identified in the insurance specifications;

2. The minimum occurrence limits and aggregate limits of insurance are consistent with those set forth in the insurance specifications;

3. All deductibles and/or self-insured retentions have been declared;

4. All required endorsements identified in the insurance specifications have been provided and copies have been attached to the appropriate certificate of insurance.

5. All policies of insurance have been placed with insurers with a current rating from the A.M. Best Company of not less than A:VII;

6. All endorsements have been signed by a person authorized by the insurer to bind coverage on its behalf.

I understand that the City will not authorize the Contractor to initiated work on behalf of the City until this certification has been fully executed and returned to the City.

________________________________________  ____________________________
Name of Company  Signature of Broker

________________________________________  ____________________________
Business Address  Date

Business Phone
KNOW ALL PERSONS BY THESE PRESENT that the CITY OF NOVATO (“City”) a municipal corporation located in the COUNTY OF MARIN, State of California, has awarded a contract to and has entered into an agreement with _______________________________, hereinafter designated as “Principal” whereby Principal agrees to complete the improvements more particularly described in all documents forming the complete contract entitled: “_____________________________,” which said agreement is hereby referred to and made a part hereof; and

WHEREAS, said PRINCIPAL is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

NOW, THEREFORE, we, the PRINCIPAL and___________________________________ as Surety, are held and firmly bound unto the CITY OF NOVATO (hereinafter called City), in the penal sum of: ____________________ DOLLARS ($ _______________) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded PRINCIPAL, his/her/its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, therein provided, on his/her/their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, and save harmless CITY OF NOVATO, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.
IN WITNESS WHEREOF, this instrument has been duly executed by the PRINCIPAL and surety above named, _________________________________________ on _______________, _____.

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

________________________________________

PRINCIPAL

BY: ______________________________________

TITLE

________________________________________

SURETY

BY: ______________________________________

TITLE

It has been confirmed that Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best’s rating of at least ______.

________________________________________

City Engineer or Public Works Director
CITY OF NOVATO

The form of the above bond is approved this ______ day of ____________________, ______.

________________________________________

Attorney for the
CITY OF NOVATO
LABOR AND MATERIALS BOND

PUBLIC WORKS

KNOW ALL PERSONS BY THESE PRESENT that the CITY OF NOVATO (“City”) a municipal corporation located in the COUNTY OF MARIN, State of California, has awarded a contract to and has entered into an agreement with ______________________________, hereinafter designated as “Principal” whereby Principal agrees to complete the improvements more particularly described in all documents forming the complete contract entitled: “____________________________,” which said agreement is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required to furnish a bond in connection and with said contract, provided that if said Principal, or any of his/her/its contractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, or for the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety of this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, we the Principal and ______________________________________, as Surety, are held and firmly bound unto the CITY OF NOVATO in the penal sum of $ ___________, lawful money of the United States, being not less than one hundred (100%) percent of the estimated contract cost of the work, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his/her/its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay any of the persons named in Section 3181 of the Civil Code, or to pay for any materials, provisions, provender, or other supplies or teams used in, upon, or for the performance of the work contracted to be done, or for any work or labor thereon of any kind or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then said Surety will pay the same in or to an amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought upon this bond a reasonable attorney’s fee in such suit, which fee shall be fixed by the Court.

AS FURTHER TERMS OF THIS BOND, IT IS UNDERSTOOD AS FOLLOWS:

1. This bond and all its provisions shall inure to the benefit of and all persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

2. This bond is given to comply with the provisions of Chapter 7, Part 4, Division 3, of the Civil Code. The liability of the Principal and Surety hereunder is governed by the provisions of said Chapter, all acts amendatory thereof, and all other statutes referred to therein.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this ______ day of _______________________, ______, the name and corporate seal of each corporate party being
hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

NOTE: To be signed by Principal and Surety and acknowledgment and notarial seal attached.

________________________________________
PRINCIPAL

BY: ______________________________________
    TITLE

________________________________________
SURETY

BY: ______________________________________
    TITLE

It has been confirmed that Surety is admitted by the Department of Insurance to transact business in the State of California and has a Best’s rating of at least ______.

________________________________________
City Engineer or Public Works Director
CITY OF NOVATO

The form of the above bond is approved this ______ day of ____________________, ______.

________________________________________
Attorney for the
CITY OF NOVATO
Dear Property Owner:

We are the general construction contractor for a City of Novato Capital Improvement Project that may affect your property.

The general scope of the construction work includes:

Our overall schedule for the construction work is as follows:

Please talk to our on-site foreman about any concerns with the work.

Our on-site foreman for the work is ____________________________. If you are unable to locate the foreman at the job site, call _________________________ at _____-______-______.

We appreciate your cooperation on this project.

Sincerely,

Copy: City of Novato City Engineer