

## **FORM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

THIS AGREEMENT made and entered into this \_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_, between the CITY OF SOUTH SAN FRANCISCO, a municipal corporation and political subdivision of the State of California, hereinafter called "CITY", and R&S Construction Management, Inc., hereinafter called "CONTRACTOR"<sup>1</sup>.

### W I T N E S S E T H:

WHEREAS, City has taken appropriate proceedings to authorize construction of the public work and improvements herein provided and execution of this contract.

WHEREAS, a notice was duly published for bids for the contract for the improvements hereinafter described.

WHEREAS, on \_\_\_\_\_, notice duly given, the City Council ("Council") of said City awarded the contract for the construction of the improvements hereinafter described to the Contractor, which Contractor said Council found to be the lowest responsible bidder for said improvements.

WHEREAS, City and Contractor desire to enter into this agreement for the construction of said improvements pursuant to the terms, definitions, and conditions set forth in the General Provisions and other Contract Documents.

IT IS AGREED as follows:

1. Scope of Work. Contractor shall perform the Work described briefly as follows:

The Work consists of the furnishing of all labor, materials, tools, equipment, and services necessary for the construction of the Safe Routes to School 2026 project; in accordance with the Contract Documents.

Also included are any such other items or details not mentioned above that are required by the Contract Documents, which are to be constructed or furnished and installed as shown on the plans, as specified herein and as directed by the Engineer.

The aforementioned improvements are further described in the "Contract Documents" hereinafter referred to.

2. The Contract Documents. The complete Contract consists of the following documents:

- (A) Notice Inviting Bids
- (B) Part I – Proposal (as accepted) and the executed Agreement for Public Improvements
- (C) Part II – General Conditions
- (D) Part III – Special Provisions: Special Conditions and Technical Specifications
- (E) Part IV – Project Plans
- (F) Part V – City Standard Details
- (G) Part VI – State Standards and Specifications, Drawings, and Supplemental Documents, as specified therein Supplementary Documents

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1. <sup>1</sup>The term "Contractor" as used herein is employed without distinction as to either number or gender and shall include whenever the context shall permit all agents, representatives, employees, servants, subcontractors and business or social invitees.

All rights and obligations of City and Contractor are fully set forth and described in the contract documents.

All of the above-named documents are intended to cooperate, so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as “the Contract Documents.”

3. Equipment - Performance of Work. Contractor shall furnish all tools, equipment, apparatus, facilities, labor, and materials necessary to perform and complete in a good and workmanlike manner the Work of general construction as called for, and for the manner designated in, and in strict conformity with, the plans and specifications for said Work entitled:

Safe Routes to School 2026

The equipment, apparatus, facilities, labor, and materials shall be furnished and said Work performed and completed as required in said plans and specifications under the direction and supervision and subject to the approval of the Engineer of said City or the Engineer’s designated assistant.

4. Contract Price. City shall pay, and Contractor shall accept, in full payment for the Work agreed to be done the sum of **TWO MILLION EIGHT HUNDRED THIRTY SEVEN THOUSAND NINE HUNDRED EIGHTY FIVE THOUSAND AND 75/100 DOLLARS** (\$2,837,985.75). Said price is determined by the lump sum price contained in Contractor's bid proposal (“Bid”). The lump sum price and unit prices are set forth in the completed Bid forms attached hereto and made a part hereof as if set forth herein verbatim. In the event work is performed or materials furnished in addition to those set forth in Contractor's bid and the specifications herein, such work and materials will be paid for at the unit prices therein contained. Said amount shall be paid in installments as hereinafter provided.

5. Rights of City to Increase Working Days. If such Work is not completed within the time specified, the Engineer shall have the right to increase the number of working days in the amount it may determine will best serve the interest of the City. If it desires to increase said number of working days, it shall have the further right to charge to Contractor and deduct from the final payment for the Work the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to Contractor and which accrue during the period of such extension, except that the cost of the final service and preparation of the final estimates shall not be included in such charges, provided, however, that no extension of time for the completion of such Work shall be allowed unless at least twenty (20) calendar days prior to the time herein fixed for the completion thereof or the time fixed by the Engineer for such completion as extended, Contractor shall have filed application for extension thereof, in writing with the Engineer.

6. Option of City to Terminate Agreement in Event of Failure to Complete Work. If at any time in the opinion of the Engineer, the Contractor has refused or failed to prosecute the Work or any severable part thereof, with such diligence as will insure its work, or any completion within the time specified, or any extensions thereof, or shall have failed to complete said work within such time, or if Contractor should be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed in the event of Contractor's insolvency, or if Contractor, or any Subcontractor, should violate any of the provisions of this Agreement, the Engineer may give written notice to Contractor, and Contractor's sureties of its intention to terminate this Agreement, such notice to contain the reasons for such intention to terminate this Agreement, and unless within five calendar (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for the

correction thereof be made, this Agreement may, at the option of City, upon expiration of said time, cease and terminate. Any excess of cost arising therefrom over and above the contract price will be charged against the Contractor and the Contractor's sureties who will be liable therefore. In the event of such termination, all money due the Contractor or retained under the terms of this contract shall be forfeited to the City; but such forfeiture will not release the Contractor or the Contractor's sureties from liability or failure to fulfill the contract. The Contractor and the Contractor's sureties will be credited with the amount of money so forfeited toward any excess of cost over and above the contract price, arising from the suspension termination of the operations of the contract and the completion of the Work by the City as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

In the determination of the question whether there has been any such noncompliance with the contract as to warrant the suspension termination or annulment thereof, the decision of the Engineer shall be binding on all parties to the contract.

7. Termination of Contract for Convenience. The City also reserves the right to terminate the contract at any time upon a determination by the Engineer in the Engineer's sole discretion that termination of the contract is in the best interest of the City. If the City elects to terminate the contract for convenience, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

(A) The City will issue the Contractor a written notice signed by the Engineer, specifying that the contract is terminated. Upon receipt of said written notice, the Contractor will be relieved of further responsibility for damage to the Work (excluding materials) as specified in Section VII-17, "Contractor's Responsibility for the Work," of the General Conditions and, except as otherwise directed in writing by the Engineer, the Contractor shall:

- (1) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
- (2) Perform work the Engineer deems necessary to secure the project for termination.
- (3) Remove equipment and plant from the site of the Work.
- (4) Take such action as is necessary to protect materials from damage.
- (5) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
- (6) Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
- (7) Dispose of materials not yet used in the Work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Section IX-2, "Progress Payments," of the General Conditions and with bills of sale or other documents of title for such materials.

(8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title, and interest of the Contractor under subcontracts or orders for materials terminated hereunder.

(9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract, including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.

(10) Take such other actions as the Engineer may direct.

(B) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

(1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section IX-2, "Progress Payments," of the General Conditions and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations the Engineer has directed.

(2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.

(3) When the Engineer determines that the Contractor has completed the Work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Contractor will recommend that the Engineer formally accept the contract to the extent performed, and immediately upon and after such acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of the Contractor's contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Engineer.

(C) Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.

(D) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

(1) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

- (2) A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed four (4) percent of said cost.
- (3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City, or otherwise disposed of as directed by the Engineer.
- (4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.
- (5) A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and subcontractors necessary to determine compensation in accordance with the provisions of this Section 5 shall be open to inspection or audit by representatives of the City at all times after issuance of the Notice of Termination and for a period of three (3) years, thereafter, and such records shall be retained for that period.

After acceptance of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with Section IX-7, "Final Payment," of the General Conditions when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

If this contract is terminated by the City for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the contract is terminated by the City for cause or convenience, such termination shall neither act as a waiver by the City of its right to require the Contractor to correct defects in the Work performed by the Contractor nor void any warranties applicable to the Work performed under the contract.

The provisions of this Section 5 shall be included in all subcontracts.

In the event of conflict between the termination provisions of this Section 8 and any other provision or the contract, this Section 5 shall prevail.

8. Performance by Sureties. In the event of any termination as herein before provided, City shall immediately give written notice thereof to Contractor and Contractor's sureties and the sureties shall have the right to take over and perform the Agreement, provided, however, that if the sureties, within five (5) working days after giving them said notice of termination, do not give the City written notice of their intention to take over the performance of the Agreement and do not commence performance thereof within five (5) working days after notice to the City of such election, City may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account, and at the expense, of Contractor, and the sureties shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Contractor as may be on the site of the Work and necessary therefore. Should Contractor contract in an individual capacity, the surety bond shall contain the following provision: "Should Contractor contract in the Contractor's individual capacity, the death of the Contractor shall not relieve the surety of its obligations."





Notices related to this Agreement and required to be given to City shall be addressed as follows:

City Clerk  
City Hall, 400 Grand Avenue  
South San Francisco, California 94080

Notices required to be given to Contractor shall be addressed as follows:

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Notices required to be given to sureties of Contractor shall be addressed as follows:

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Notices required to be given to the Escrow Agent of Contractor, if any, shall be addressed as follows:

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14. Interpretation. As used herein, any gender includes each other gender, the singular includes the plural, and vice versa.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, consisting of twelve (12) pages (being pages A-1 through A-12), each of which counterparts shall for all purposes be deemed an original of said Agreement, have been duly executed by the parties hereinabove named, on the day and year first hereinabove written.

**CITY OF SOUTH SAN FRANCISCO,**  
A Municipal Corporation

**CONTRACTOR:**  
R&S Construction Management, Inc.

By: \_\_\_\_\_  
Sharon Ranals, City Manager

By: \_\_\_\_\_  
Matthew Rene Ramirez, CEO

By: \_\_\_\_\_  
Teera Nuntaworanuch, Secretary/CFO

(If Contractor is an individual, so state.  
If Contractor is a Corporation, a corporate seal  
or signatures of the President or Vice President  
and the Secretary Treasurer are required).

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk