



# City of Emeryville

CALIFORNIA

## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (“Contract”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **LEGACY MECHANICAL & ENERGY SERVICES, INC** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

### WITNESSETH THAT

**WHEREAS**, the City Manager authorized staff to issue solicitations directly to certain HVAC contractors given an emergency situation as a result of two significant breakdowns of the existing HVAC system in 2024 and;

**WHEREAS**, the City conducted a bidding procedure in compliance with the requirement that Public Works make every effort to solicit bids from qualified vendors in accordance with Administrative Instruction No.605 Section 6.3; and

**WHEREAS**, Contractor submitted the lowest responsible bid; and

**WHEREAS**, City staff issued a Purchase Order on November 26, 2024, to immediately begin the repair of the HVAC system and staff are now seeking retroactive approval by the City Council to enter into a contract with the Contractor; and

**WHEREAS**, the City has determined that the Contractor is qualified by training and experience to render such services; and

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

### 1. CONTRACT DOCUMENTS

The following documents, including their respective exhibits and addenda (collectively "**Contract Documents**"), are by this reference incorporated in and made a part of this Contract in the following order of precedence:

- Construction Contract
  - Exhibit A –
    - 1) **Exhibit A(1)** – Addenda to Project Specifications (if applicable)
    - 2) **Exhibit A(2)** – Project Specifications
    - 3) **Exhibit A(3)** – Addenda to Project Plans (if applicable)
    - 4) **Exhibit A(4)** – Project Plans
    - 5) Contractor’s Bid and Proposal (as accepted by City)

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

- **Exhibit B** – Contract Insurance Requirements
- **Exhibit C** – City Supplemental Terms and Conditions
- **Exhibit D** – Required Bond Documents
- **Attachment A** – City of Emeryville Standard Specifications (online only)
  - <http://www.ci.emeryville.ca.us/132/City-Standards>
  - <http://www.ci.emeryville.ca.us/348/City-Standard-Specifications>
- **Attachment B** – State of California Department of Transportation Standard Plans (online only)  
<http://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications>
- **Attachment C** – State of California Department of Transportation Standard Specifications (online only)  
<http://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications>

Any and all future amendments to this Contract will be incorporated as Construction Contract Amendments as needed.

## **2. SCOPE OF WORK**

In conformance with the Contract Documents, Contractor will furnish, all labor, materials, equipment, incidentals, transportation, and disposal for services required in order to perform and complete the Project.

## **3. PRICE**

The total amount to be paid under this Contract for all of the work set forth in Section 2 above is exceed **FIVE HUNDRED THIRTY ONE THOUSAND THIRTY TWO DOLLARS AND NO CENTS (\$531,032.00)** ("**Total Contract Price**"). This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

## **4. TIME FOR COMPLETION**

After the Contract has been executed by City, Contractor shall begin work within **five (5) calendar days** after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **ninety (90) working days** from the effective date of the Notice to Proceed. Liquidated Damages in the Amount of **\$500.00 per calendar day** will be assessed for failure to complete the contract work within the number of workdays specified.

## 5. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons

## 6. INSURANCE

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

## 7. NO WAIVER

Failure of City to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies or to properly notify Contractor in the event of breach, or the acceptance of or payment for any good hereunder, shall not release Contractor of any of the warranties or obligations of this Contract and shall not be deemed a waiver of any right of City to insist upon strict performance hereof.

**8. NOTICES**

Any notice required to be given by this Contract will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

<b>CITY</b>	<b>CONTRACTOR</b>
Mohamed Alaoui 1333 Park Ave Emeryville, California 94608 Phone No: 510-596-4300 E-Mail : mohamed.alaoui@emeryville.org  <i>with a copy to:</i> Ali Ahmadzadeh 1333 Park Ave Emeryville, California 94608 Phone No: 510-596-3742 E-Mail : ali.ahmadzadeh@emeryville.org	Jerome Skelton 2603 Camino Ramon, Suite 490 San Ramon, CA 94583 Phone No: 925-820-6938 E-Mail : jskelton@legacymechnical.com

**9. ENTIRE CONTRACT**

This Contract contains the entire agreement of the parties with respect to the subject matter of this Contract. Any modifications to this Contract shall be in writing.

**10. AUTHORITY TO CONTRACT**

Contractor covenants and declares that it has obtained all necessary approvals to bind Contractor to this Contract and that the representative signing the Contract is authorized to do so.

*SIGNATURES ON FOLLOWING PAGE*

**City of Emeryville** | Construction Contract  
REV11/2024

**11. SIGNATURE PAGE TO CONSTRUCTION CONTRACT**

**IN WITNESS WHEREOF** the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:  
*John Kennedy*  
\_\_\_\_\_  
2C934002DB55467...  
City Attorney

Dated: **CITY OF EMERYVILLE**

\_\_\_\_\_  
Adam W. Politzer, Interim City Manager

Dated: **LEGACY MECHANICAL & ENERGY SERVICES, INC**

12/03/2024  
\_\_\_\_\_  
DocuSigned by:  
*Todd Schoenfeld* (Signature)  
FB688925FG864C4  
Todd Schoenfeld, Senior Vice President



# Exhibit A

## REPLACEMENT OF THE EXISTING HVAC SYSTEM (AC UNIT AND BOILER SYSTEM) IN THE CIVIC CENTER IN CITY OF EVERYVILLE

Prepared for City of Emeryville

by Legacy Mechanical & Energy Services

11/1/24





**Date Sent:** 11/1/24  
**To:** City of Emeryville  
 1333 Park Avenue, Emeryville, CA 94608  
**Attn:** Alberto Giannecchini, GSH Group  
**E-Mail:** alberto.Giannecchini@GSHGroup.c  
 o  
**FAX:** NA  
**Phone:** NA  
**Mobile:** 510-828-1957  
 ;

**From:** Legacy Mechanical & Energy Services,  
 Inc.  
**Attn:** Jerome Skelton  
**E-Mail:** [jskelton@legacymechanical.com](mailto:jskelton@legacymechanical.com)  
**Mobile:** 925-785-9103  
 ;

**Reference:** REPLACEMENT OF THE EXISTING HVAC SYSTEM  
 (AC UNIT AND BOILER SYSTEM) IN THE CIVIC CENTER  
 IN CITY OF EVERYVILLE  
**Subject:** HVAC Proposal  
**Ref. No.:** 24-0121-C  
**Total:** 7 Page Proposal + 1 Page QA Statement + 1 Page Company Qualification + 9 Page RFP  
**Pages:** 18 - Pages Total

Dear Alberto,

**Legacy Mechanical and Energy Services is pleased to provide a Design/Build proposal for the aforementioned project and has all the capability and manpower to execute this project from start to finish.**

**Proposal Basis**

1. RFP provided by **Alberto Giannecchini, GSH Group**; 9 Page(s); Dated **10/21/24**
2. Job walks on several occasions with Alberto G. with GSH group.

**Basis of Design**

- **RFP requirements and existing conditions**
- **SEE BELOW SCOPE AS PROVIDED BY THE CITY OF EMERYVILLE**

**3. PROPOSAL**

**1. Proposal Requirements**

The proposal shall be as concise as possible and should not include any elaborate or unnecessary promotional items. It shall include the following items:

- A description of the Contractor’s proposed methodology to be employed for each task (optional tasks excluded).
- A statement of ability to perform the scope of work.
- A list of a minimum of 10 similar projects completed with references.
- Name of Contractor’s representative who will be assigned to direct projects under this agreement.

A description of the Contractors Quality Assurance Program to be implemented on Project.

- The Contractor’s proposal shall be signed by an official authorized

to bind the firm and shall contain a statement to the effect that the fee proposed is valid for at least ninety (90) calendar days.

- The length of the proposal shall not exceed twenty (20) pages.
- The selected contractor is required to obtain an Emeryville Business License (any pay all associated fees) and submit Insurance Certificates and Policies within five days of selection.
- List the full scope of work in this document and include the bid table.

## 2. New AC Unit and Heat Pump Technical Requirements

**Mechanical Contractor is responsible for the removal of the existing 75-ton Trane IntelliPak Air Conditioning Unit and natural gas fired space heating boiler.**

**Replacing them with a near condensing boiler and new custom package cooling only VAV unit of equal capacity. This custom unit serving VAV units will be designed to match the existing footprint of the Trane IntelliPak nearly identically. The new boiler will provide a minimum of 180°F space heating hot water to (30) existing hot water coils and will include (2) redundant pumps set up in a primary variable flow configuration, each having ABB or Dan Foss Variable Frequency Drives to control them.**

- Maximum combined weight to be as close to identical as possible. If it does, prior approval from the city must be submitted along with a cost impact statement.
- Maximum amp and voltage shall not exceed current infrastructure allowance. If it does, prior approval from the city must be submitted along with a cost impact statement.
- Maximum CFM shall match existing understanding new high filter differential pressures are expected due to new mist eliminator and filter requirements
- All existing VAVs are to remain without modification.
- Maximum Dimensions must be adhered to for clearance reasons
  - o Contractor to field verify all dimensions
- New Air Conditioning Unit Scope
  - o Interior and exterior coated coils
  - o Minimum 4" stainless steel double sloped condensate pan
  - o 7000-hour salt spray finish
  - o All interior panels to be without perforations. All interiors shall be smooth wall construction
  - o Merv 13 bag filters
  - o Merv 8 prefilters
  - o Mist eliminators
  - o Fan wall array operation fans to be no larger than 7.5 HP motors if possible
  - o Unit shall have an integrated airflow supply station
  - o Unit shall be provided with a BACNET controller
  - o Unit shall have capacity to run stand alone.
  - o Supply one VFD per 2 fans
  - o Fans shall have low pressure drop backflow dampers
  - o All access doors shall be facing the roof ladder access door.
  - o Ductwork shall be connected with new flex couplers
  - o Replace corroded ductwork as required.
  - o AC unit shall be installed with new isolation equipment
  - o Shelter in place mode of operation
  - o Filter Differential Pressure sensor for Pre-filter (BMS tie in point)
  - o Filter Differential Pressure sensor for Final Filter (BMS tie in point)



## • New Boiler Scope

- o Must be outdoor rated.
- o Must have BACNET Card
- o Must match BTUH output listed on drawings
- o Must be a Condensing boiler for water delivery and efficiency. Design discharge water temperature to be 180F.
- o Pump System
  - Provide and install (2) new Bell and Gosset (Lead/Lag) pumps with full sized impellers. Trimmed impellers are not allowed.
  - Provide new electrical to support newly added redundant pump.
  - Upgrade electrical to existing pump as required.
  - Provide and install all new test ports as exist in the existing configuration and as to allow for air balancer to test system performance.
  - Do not install a triple duty valve.
  - Install new low pressure drop backflow check valve
  - Install new supply and return manual isolation valves for each pump
  - Install 2 new VFDs with BACNET card for access for the new pumps
  - Provide and install (1) New Expansion tank.
  - Provide and install (1) chemical pot feeder.
  - Provide and install (1) air separator.
  - Install and install (1) Onicon flow meter @ HHW loop. Coordinated with Controls Contractor. Mechanical Contractor to supply equipment and install.
  - Install and install (1) bypass control valve. Coordinated with Controls Contractor. Mechanical Contractor to supply equipment and install.
  - Provide and install copper condensate drain piping to existing POC @Roof.
  - Provide and install new make-up water system from existing POC @ Roof including new backflow prevention, check valve and PRV devices.
  - All electrical and plumbing connections as well as infrastructure deficiencies to be included in scope performed by contractor.
  - Fill with water all systems and test for leaks with pumps running prior to functional testing.
  - Perform water balance of pumps to 0 to +10% criteria of design values.
  - All hot water piping to be insulated with new material starting at roofline. Aluminum armor wrapped insulation required.

### • Air Balance Assistance Scope

- o Assist Controls Contractor 4 hours with startup, commissioning, air and water balance. Efforts include but are not limited to setting values, verifying sequence of operation and performance testing.

### • Engineering Scope

- o Include mechanical engineering and electrical design drawings for project.
- o Structural engineering and design for new equipment supports.

- **Permit Scope**

- o Wet signed mechanical drawings.
- o Wet signed electrical drawings.
- o Wet signed structural calculation and upgrade drawings if ACU and Boiler weigh are greater than existing.

- **Painting Scope (All work completed at regular hourly rate)**

- o Provide touch up painting of all interior ducting, piping and structural members disturbed during the project.
- o Provide touch up paint of sight screen and structural members above roofline disturbed during the project as disturbed.

- **Roofing Scope (All work completed at regular hourly rate)**

- o Provide roofing repairs at all locations where new structural members, electrical conduits and piping occur as part of this project. Roof sealant to be applied 4 ft radius of any repairs with compatible roofing material.
- o Provide 1-year warranty of roofing repairs.

- **Fire Life Safety**

- o All current code compliant fire Life Safety components, sequence of operation and fireproofing repair work shall be included. Establishment and re-establishment of all code required fire life safety devices, features and devices, including but not limited to fire life safety conduits, pipes and ducts must be included.
- o Fire Life Safety Contractor to be carried by Mechanical Contractor.
  - All code required upgrades are to be included in pricing.

- **Roofing**

- o Perform sealing of areas with PMA coating
  - Under new ACU
  - Under new Boiler Skid as applicable
  - Local roof drains within 20-foot radius shall receive 4' radius of sealant.
- o Roofing repairs/sealing warranty to be 1 year from completion

- **Warranty**

- o All equipment provide shall come with a 1-year warranty.
- o Provide an add alternate for Extended Warranty options if available.

- **Exclusions**

- o Cost for permits is excluded. Permits are not needed. All work must be performed based on current Government and Building Code requirements.

- **Drawings:**

- **Mechanical**

- o Mechanical Drawing(s) Dated 6/17/96; Labeled M0.1, M0.2, M0.3, M1.1, M2.1, M2.2, M2.3, M2.4, M3.1, M3.2, M4.1, M4.2, M4.3, M4.4.

- **Structural**

- o Structural Drawing(s) Dated 6/17/96: Labeled SL1, S2.1, S2.2, S2.3, S2.4, S4.1, S5.1, S5.2, S5.3, S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S8.1, S8.2, S8.3.

## Work Included

### 1. Equipment Scope

- a. Provide (1) 75-ton Package-Cooling Only AHU (Including Salt Coating for Saltwater Proximity)
- b. Provide (1) curb adapter for Petra AHU to existing Trane factory curb.
- c. Provide (1) 1000 MBH Raypak Xvers condensing boiler including BACnet card
- d. Provide (2) Bell and Gossette 2hp-480v/3ph In-line HHW Pumps
- e. Provide (1) expansion tank
- f. Provide (1) chemical pot feeder
- g. Provide (1) air separator
- h. Provide (2) 2hp-480v/3ph VFD (No Bypass)
- i. Provide factory startup of Petra Unit
- j. Provide factory startup of Raypak Xverse Unit.

### 2. Labor & Material Scope

- a. Engineering design and drawings for project.
- b. Project management for project.
- c. Structural design for new equipment supports
- d. Supervisor supervision for project.
- e. Sheet metal detailing.
- f. Piping detailing.
- g. Delivery
- h. Material handling and site loading
- i. Demo back and cap-off natural gas piping @existing boiler platform.
- j. Disconnect duct smoke detector wiring from (1) Trane IntelliPak
- k. Demo and dispose of (1) existing rooftop natural gas boiler, pumps, tanks and local supply and return piping.
- l. Demo and dispose of (1) existing Trane IntelliPak
- m. Provide and install (1) new seismic isolation rail and galvanized sheet metal pedestal cap at existing condenser section pedestal of AHU.
- n. Set and seismically secure (1) Raypak boiler including new sheet metal cap
- o. Install (1) curb adapter for mating new Petra AHU to existing Trane factory curb.
- p. Set and seismically secure (1) PETRA 75-Ton AHU
- q. Set and seismically secure (2) In-line HHW Pumps
- r. Provide and install new supports as needed for transition of ductwork to new equipment footprint.
- s. Provide and install galvanized rectangular ductwork transitions.
- t. Provide and install new natural gas piping, valves, flex, fittings and supports needed to mate new boiler to existing POC.
- u. Provide and install HHW supply and return piping as needed to provide a functional loop.
- v. Provide and install copper condensate drain piping from boiler and AHU in separate piping to existing POC @Roof.
- w. Provide and install make-up water system from existing POC @Roof.
- x. Install (1) new expansion tank with associated piping and valves.
- y. Install (1) new 5-gallon pot-feeders with valve assembly and pedestal.
- z. Fill with water all systems and test for leaks with pumps running prior to functional testing.
- aa. Install and wire in with new electrical circuits (2) 2hp-480v/3ph VFD (No Bypass)
- bb. Reconnect duct smoke detector wiring to (1) PETRA 75-Ton AHU
- cc. Start-up and test for proper operation (1) Raypak Boiler
- dd. Start-up and test for proper operation (1) PETRA 75-Ton AHU
- ee. Start-up and test for proper operation (2) Inline HHW Pumps
- ff. Clean-up work area.

### 3. Balance Scope

- a. Balance subcontractor to assist controls contractor 4 hours with startup, commissioning, air and water balance. Efforts include but are not limited to setting values, verifying sequence of operation and performance testing. **(Balance scope is done at equipment level only and any VAV terminal level scope will be addressed on a change order basis)**
- b. Balance subcontractor to perform work during normal working hours.

#### 4. Rigging Scope

- a. Rigging subcontractor to remove and properly dispose of (1) Trane IntelliPak
- b. Rigging subcontractor to remove and properly dispose of (1) existing boiler system
- c. Rigging subcontractor to provide recycled content paperwork for green halo compliance.
- d. Rigging subcontractor to receive, store, haul and set (1) PETRA 75-Ton AHU. (1) Boiler, and (2) Pumps
- e. Rigging subcontractor to include required riggers.
- f. Rigging subcontractor to provide about (16) HR hook time spread over (2) Mobilizations.
- g. Rigging subcontractor to set-up in parking lot of Town Hall within 125' of AHU center
- h. Rigging subcontractor to include Saturday labor premium.
- i. Note that the floor area under crane boom needs to be clear of occupants during lift.

#### 5. Painting Scope

- a. Provide touch up painting of all interior ducting, piping and structural members disturbed during the project.
- b. Provide touch up paint of sight screen and structural members above roofline disturbed during the project as disturbed.

#### 6. Electrical Scope

- a. Electrical subcontractor to provide (2) new 480v/ 3ph pump circuits from existing panel 2HC
- b. Electrical subcontractor to safe-off existing 225amp disconnect and make ready for re-use on new AHU.
- c. Electrical subcontractor to disconnect and safe off existing boiler power and make ready for reconnection to the new boiler.
- d. Electrical subcontractor to reconnect and provide new flex and EMT where necessary electrical power to new boiler.
- e. Electrical subcontractor to reconnect and provide new flex and EMT where necessary electrical power to new AHU.
- f. Wire in (2) 2hp-480v/3ph VFD (No Bypass)
- g. Electrical subcontractor to include Saturday overtime labor premium.
- h. Electrical subcontractor to perform work during normal working hours.

#### 7. Roofing Scope

- a. Provide roofing repairs at all locations where new structural members, electrical conduits and piping occur as part of this project. Roof sealant to be applied 4 ft radius of any repairs with compatible roofing material.
- b. Provide 1-year warranty of roofing repairs.

#### 8. Insulation Scope

- a. Insulation subcontractor to insulate new heating hot water supply and return piping per T-24 requirements including aluminum jacketing at exterior of building.
- b. Insulation subcontractor to perform work during normal working hours.

#### 9. Fire Life Safety Scope

- a. FLS subcontractor to disconnect existing AHU shutdown wiring and reconnect to new Petra AHU to provide same sequence of shutdown as previous Trane AHU.

#### 10. Work Included in All Scopes of Work

- a. All work during normal business hours. **(Except where required to be OT during demo and reinstallation of the mechanical equipment.)**
- b. HVAC engineering.
- c. HVAC Title 24 calculations.
- d. HVAC drawings.
- e. Submittals and Operation & Maintenance Manuals.
- f. One-year warranty on material and workmanship.
- g. One-year warranty on equipment (equipment warranty requires that factory recommended maintenance and service is performed during this one-year warranty period).

## Work Excluded

1. Permits and permit & plan check fees and permit submission.
2. Costs due to undisclosed Historical Building status.
3. Costs associated with upgrading or modifying existing systems (other than scope described above) to meet current codes, ordinances or regulations including non-code compliant condensate termination, non-code compliant gas piping sizing and non-code electrical wiring.
4. Title-24 leak testing or pressure testing of existing HVAC ductwork systems.
5. Utility work including upgrading or modifying electrical service, gas service, domestic water service or sanitary waste service.
6. Hazardous material work including asbestos, lead paint and hazardous chemicals.
7. Prior to beginning work, an industrial hygienist's report will be required stating that the material and equipment in the scope above is free of asbestos, lead paint and hazardous chemicals.
8. Scope of work associated with hidden conditions.
9. Warranty or work on existing HVAC system.
10. Warranty on Owner provided equipment.
11. Relocation of furniture or furnishings for installation access.
12. Protection work including covering floors and furniture.
13. Incremental clean-up.
14. Ceiling work (other than scope described above) including seismic ceiling wires for air outlets, access doors, ceiling tiles, ceiling grid, cutting, patching and painting.
15. Wall work (other than scope described above) including cutting, framing, patching and painting.
16. Floor work including patching, leveling, coating, saw cutting, trenching and backfill.
17. Concrete work including floor trenches, housekeeping pads and concrete for inertia base fill.
18. Coring, saw cutting, trenching, backfill and X-ray or magnetometer work.
19. Demo work (other than scope described above) including demo removal and disposal.
20. Dumpster or container for disposal of construction debris.
21. Waste water work (other than the scope described above) including disconnect for demo, utility waste water piping, waste water mains, drain lines, floor sinks, roof drains, area drains, condensate piping and insulation of condensate piping.
22. Domestic water work (other than the scope described above) including disconnect for demo, utility water meters, utility back flow preventers, utility back flow preventer detectors, back flow preventers, pressure reducing valves, water main piping and make-up water piping.
23. Water treatment work (other than scope described above) including pot feeders, cooling tower chemical treatment systems, chemicals, chemical treatment, draining systems, flushing systems and filling systems.
24. Control work (other than the scope described above) including disconnect for demo, actuators, relays, sensors, sensor wells, control valves, 24V transformers, wiring, conduit, programming and graphics.
25. Fire protection work including sprinkler head relocation.
26. Insulation of existing ductwork and existing piping.
27. Vibration treatment (other than scope described above).
28. Noise treatment.
29. Acoustical treatment.
30. Rigging street permits and traffic control.
31. Temporary HVAC.

## Clarifications

The ideas, scope of work, concepts, design, site survey information and engineering documentation as outlined in this proposal are resultant from the efforts of Legacy Mechanical for which we are not seeking payment in consideration of this effort. We do ask that this document (or portions thereof) not be shared with competitors of Legacy and that you base your final purchasing decision on the thoroughness of our proposal, our industry experience as well as our overall competitiveness.

## Schedule

1. Standard delivery for long lead equipment is about 20-28 weeks.
2. The estimated duration for this project is about 5-14 days.
3. We anticipate commencement of this project in about 22-30 weeks after receipt of PO and approved submittals.

## Service/Equipment Maintenance

1. For equipment installed under this project, discounted pricing on preventative maintenance agreements through Legacy is available. Please contact your project manager at any time during this project's operation should you be interested in an equipment service agreement.
2. Discounted rates are available for the first year following the completion date of this project.



**Pricing**

1. We are pleased to quote the following pricing for the scope above:

<b>Estimate Breakout</b>	<b>Breakout \$</b>	<b>Breakout Type</b>
Labor & Material Scope	\$131,275	Lump Sum
Equipment Scope	\$332,257	Lump Sum
Balance Scope	\$9,000	Lump Sum
Rigging Scope	\$18,750	Lump Sum
Painting Scope	\$7,500	Lump Sum
Electrical Scope	\$17,500	Lump Sum
Roofing Scope	\$3,750	Lump Sum
Insulation Scope	\$9,375	Lump Sum
Fire Life Safety Scope	\$5,750	Lump Sum
<b>Total Base Bid</b>	<b>\$531,032</b>	<b>Lump Sum</b>

**Performance Bond Is Included In The Above Price**

2. The above pricing is in effect for a period of **90** days and includes sales tax.
3. If the above meets with your approval, please sign in the space provided below, and return one copy of this letter to our office, to act as your authorization for Legacy to proceed with the work.

Accepted By \_\_\_\_\_ Date \_\_\_\_\_

We look forward to working with you and the other team members on this project. Please call me to set up a time to meet and review this proposal. Please call should you have any questions.

Sincerely,

Legacy Mechanical & Energy Services, Inc.

**Contractor’s representative who will be assigned to direct projects under this agreement.**

**Jerome Skelton**  
Project Manager/ Estimator

Todd Schoenfeld-

## **Quality Assurance Statement**

At Legacy Mechanical & Energy Services, our commitment to quality assurance is rooted in our dedication to exceptional service, strong industry relationships, and a wealth of knowledge and experience. We understand that delivering outstanding mechanical construction solutions requires more than technical expertise; it necessitates professionalism and a collaborative approach.

**Service Excellence:** We prioritize our clients' needs by offering personalized service and responsive support throughout every project. Our team is dedicated to understanding the unique challenges and goals of each client, ensuring that we provide tailored solutions that exceed expectations.

**Strong Industry Relationships:** We have cultivated long-lasting relationships with suppliers, subcontractors, and industry professionals. These partnerships enhance our capabilities, allowing us to source the best materials and talent for our projects. We believe that collaboration leads to innovative solutions and superior outcomes.

**Professionalism:** Our team embodies professionalism at every level, from project management to on-site execution. We adhere to the highest ethical standards, ensuring transparency, accountability, and respect in all our interactions. This professionalism fosters trust and confidence among our clients and partners.

**Industry Knowledge and Experience:** With over 20 years of experience in mechanical construction, our team possesses deep industry knowledge that informs our practices. We stay updated on the latest technologies, regulations, and best practices, ensuring that we implement cutting-edge solutions that enhance safety and efficiency.

At Legacy Mechanical, we are committed to quality in every facet of our work. Our focus on service, strong relationships, professionalism, and extensive industry knowledge ensures that we deliver projects that not only meet but exceed our clients' expectations.



## Legacy Mechanical Company Project Qualifications

- 1. Koll Center Trane Boxcar Project - January 2024. Pleasanton, Ca**
  - a. (2) 55-ton Trane boxcars with side discharge duct system.  
Kristen Edwall (925)-997-9477 - [kedwall@kgip.com](mailto:kedwall@kgip.com)
- 2. Clorox Bldg.-E Boiler Project - November 2022. Pleasanton, Ca**
  - a. (3) Lochinvar condensing boilers and BMS upgrade  
Abel Chavez (925) 416-9325 - [Abel.Chavez@clorox.com](mailto:Abel.Chavez@clorox.com)
- 3. Clorox Bldg.-D Boiler Project - November 2023. Pleasanton, Ca**
  - a. 3) Lochinvar condensing boilers and BMS upgrade  
Abel Chavez (925) 416-9325 - [Abel.Chavez@clorox.com](mailto:Abel.Chavez@clorox.com)
- 4. WCEP Bldg.-4 Trane Boxcar Project - December 2022. Walnut Creek, Ca**
  - a. (2) Trane 40-ton Boxcar, (4) Duct Furnaces and (2) Supply Fans  
Amy Callahan (925) 938-8171 - [acallaghan@californiagroup.com](mailto:acallaghan@californiagroup.com)
- 5. WCEP Bldg.-12 Petra Boxcar Project - December 2022. Walnut Creek, Ca**
  - a. (3) Petra 60-ton Boxcar  
Amy Callahan (925) 938-8171 - [acallaghan@californiagroup.com](mailto:acallaghan@californiagroup.com)
- 6. Workday Carrier Boxcar Project - January 2024. Pleasanton, Ca**
  - a. (4) Carrier Boxcar Project  
Caleb Ternoir (925) 200-7684 - [caleb.ternoir@workday.com](mailto:caleb.ternoir@workday.com)
- 7. 303 Hegenberger. Boiler Project - March 2024 – Oakland, Ca**
  - a. Install (1) Raypak Rooftop Condensing Boiler  
Geoff Galloway (510) 332-7835 - [geoff.galloway@servi-tek.net](mailto:geoff.galloway@servi-tek.net)
- 8. 4550 Norris Canyon Boiler Project – January 2024 – San Ramon, Ca**
  - a. Install (1) 4000 MBH Riello Condensing Boiler  
Amy Peterson (408) 772-9020 - [amy@dolingerproperties.com](mailto:amy@dolingerproperties.com)
- 9. Sebastopol Public Library HVAC Remodel - July 2023 – Sebastopol, Ca**
  - a. Replace (4) 15-ton Rooftop Package Heat Pump Units with Structural improvements.  
Steve Grigas (510) 919-1543 - [s.grigas@syserco-es.com](mailto:s.grigas@syserco-es.com)
- 10. Penumbra AC#1 Replacement – May 2023 – Alameda, Ca**
  - a. Replace (1) 60-ton Carrier Boxcar Unit  
Erin Lucas (510) 209-9522 - [Erin.lucas@penumbrainc.com](mailto:Erin.lucas@penumbrainc.com)



# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **LEGACY MECHANICAL & ENERGY SERVICES INC.**

#### 1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

##### 1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- General Liability**  
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- Automobile Liability**  
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- Professional Liability / Errors and Omissions**  
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- Workers' Compensation and Employer's Liability**  
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- Pollution Liability Insurance**  
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)

REV 08/2020

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

**1.2 Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

**General Liability**

**All Contract Types**

**\$1,000,000.00** per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

**OR**

**Construction Specific**

**\$2,000,000.00** per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

**Automobile Liability**

**\$2,000,000.00** per accident for bodily injury and property damage.

**Professional Liability / Errors and Omissions**

**\$2,000,000.00** per claim and aggregate.

**Workers' Compensation and Employer's Liability**

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

**Pollution Liability Insurance**

**\$2,000,000.00** per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

**2. INSURANCE ENDORSEMENTS**

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

**City of Emeryville | Contract Insurance Requirements (Exhibit B)**

REV 08/2020

**General Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

**Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

**City of Emeryville | Contract Insurance Requirements (Exhibit B)**

REV 08/2020

**Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

**Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**ALL COVERAGES**

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

**3. NO SPECIAL LIMITATIONS**

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

**4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**5. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

**6. VERIFICATION OF COVERAGE**

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**7. SUBCONTRACTORS**

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

**8. REPORTING OF CLAIMS**

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.

*Attach:  
Insurance Certificate and Endorsements*



# City of Emeryville

CALIFORNIA

## EXHIBIT C

### City Supplemental Terms and Conditions

As used in this Exhibit C, Contractor refers to **LEGACY MECHANICAL & ENERGY SERVICES INC.**

#### 1. INSURANCE

Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

#### 2. PAYMENT OF TAXES

##### 2.1 *Taxes Included*

The lump sum and rates set forth in **Exhibit A** shall include full compensation for all taxes which Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt Contractor from payment of any tax will be furnished to Contractor by City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract. Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether State or Federal, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

##### 2.2 *Business Tax*

Contractor has and shall maintain a current business license with City of Emeryville during the term of this contract. Contractor shall insert in each of its subcontract Contracts a provision which requires its subcontractors to present proof that the subcontractor has obtained a current business license with City of Emeryville during the term of this contract.

#### 3. PERMITS AND LICENSES

Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other

regulatory bodies in order to perform the Work contracted for under this Contract. Contractor shall comply with all permits applicable to the Work. Contractor has and shall maintain the appropriate State Contractor's License, pursuant to [Chapter 9 of Division 3 of the California Business and Professions Code](#).

#### **4. CALIFORNIA LABOR CODE REQUIREMENTS**

- A. Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- B. If the Work is being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Work must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.



**City of Emeryville** | City Supplemental Terms and Conditions

REV 09/2021

- C. This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. Pursuant to the requirements of section 1860 of the California Labor Code, Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:
- "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- E. Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

**5. COMPLIANCE WITH LAWS**

All Work performed by Contractor under this Contract shall be in accordance with applicable federal, state and local requirements, including, but not limited to environmental laws and laws regarding disposal of hazardous wastes.

**6. NONCOLLUSION DECLARATION**

By executing this Contract, Contractor declares that only persons or parties interested in this Contract are those named in Contractor's bid or proposal and that such bid or proposal was not made in the interest of or on behalf of any undisclosed person, firm or organization; that the bid or proposal was genuine and not collusive or sham; that the signatory to this Contract has not directly or indirectly induced or solicited others to put in a sham bid or proposal, or to refrain from bidding or proposing; and that the signatory to this Contract has not in any manner sought by collusion to secure for itself an advantage over other potential proposers.

## **7. DISCRIMINATION PROHIBITED**

Contractor covenants and agrees that in performing the Work required under this Contract, Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

## **8. BONDS (REQUIRED FOR CONTRACT PRICES \$25,000 AND GREATER)**

### **8.1 Payment Bond**

**Required** /  **Not Required**

If required for this Contract, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Total Compensation, and which conforms with the requirements of Civil Code section 9550 et seq., as may be amended from time to time.

### **8.2 Performance Bond**

**Required** /  **Not Required**

If required for this Contract, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Total Compensation to guarantee the faithful performance of the Work.

### **8.3 Bond Provisions**

Any and all bonds required for this Contract shall be in a form acceptable to the City Attorney. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein. Any alteration or alterations made in the Plans and Specifications which are a part of this Contract or in any provision of this Contract shall not operate to release any surety from liability on any required bond and the consent to make such alterations is hereby given. Any surety on such bonds hereby waives the provisions of Section 2819 of the Civil Code.

## 9. CITY LABOR REQUIREMENTS

- A. As of the Effective Date, compliance with the City's living wage ordinance is  **required** /  **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.
- B. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.
- C. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.
- D. Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$18.54 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.
- E. In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

## **10. RECORDS**

Contractor will permit City to audit, examine, and make copies of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract.

## **11. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

## **12. SEVERABILITY**

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

## **13. COUNTERPARTS**

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

## **14. NO THIRD-PARTY BENEFICIARIES**

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that,

WHEREAS, the City of Emeryville, a municipal corporation located in Alameda County, State of California (hereinafter referred to as "City"), has entered into a Contract with \_\_\_\_\_, (hereinafter referred to as "Principal"), for **REPLACEMENT OF THE EXISTING HVAC SYSTEM (AC UNIT AND BOILER SYSTEM) IN THE CIVIC CENTER IN CITY OF EVERYVILLE, PROJECT NO. 15650018**; and

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

NOW, THEREFORE, we, the Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto the City in the penal sum of (\$ \_\_\_\_\_), lawful money of the United States of America, being not less than one hundred percent (100%) of the Contract Amount, to be paid to the City or its successors and assigns; 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 presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bound Principal, or its heirs, executors, administrators, successors, transferees, or assigns approved by the City, shall promptly and faithfully perform the covenants, conditions, and agreements in the Contract until completion, during the original term and any extensions thereof as may be granted by the City, with or without notice to Surety, and shall also promptly and faithfully perform all covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, provided on the Principal's 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 and save harmless the City, its officers employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

FURTHERMORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that upon Final Completion of the Contract, the above obligation shall be reduced to the amount of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), being not less than twenty percent (20%) of the Contract Amount, and shall hold for a period of two (2) years, during which time if the above bound Principal, or its heirs, executors, administrators, successors, transferees, or assigns shall fail to make full, complete and satisfactory repair and replacements or totally to protect the City from loss or damage made evident during said period from the date of Final Completion of the Contract, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, or failure to satisfy the warranty as set forth in the Contract, the above obligation in said sum of \$ \_\_\_\_\_, shall remain in full force and effect, otherwise the above obligation shall be void.

Whenever Principal shall be declared by the City to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly do one of the following at the City's election:

1. Undertake through its agents or independent Contractors, reasonably acceptable to the City, to complete the Contract in accordance with its terms and conditions and to pay and perform

all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages.

2. Reimburse the City for all costs the City incurs in completing the Contract, and in correcting, repairing or replacing any defects in materials or workmanship and/or materials and workmanship which do not conform to the specifications in the Contract.

Further, the 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 release or exonerate the Surety on this bond or in any way affect its obligations under this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the Contract Documents.

The Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against the Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the City's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or its successors or assigns.

In the event the City, or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then in addition to the penal sum hereinabove specified, Principal and the Surety, jointly and severally, agree to pay to the City or its successors or assigns, a reasonable sum on account of its attorney's fees incurred in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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.

Principal

\_\_\_\_\_ Name

\_\_\_\_\_ Title

\_\_\_\_\_ Signature

(SEAL)

Surety

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

(SEAL)

*\*Note: To be considered complete, both the Principal and an admitted Surety Insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign the Performance Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney*

## PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, the City of Emeryville, a municipal corporation located in Alameda County, State of California (hereinafter "City"), has awarded a contract to \_\_\_\_\_, (hereinafter "Principal"), for **REPLACEMENT OF THE EXISTING HVAC SYSTEM (AC UNIT AND BOILER SYSTEM) IN THE CIVIC CENTER IN CITY OF EVERYVILLE, PROJECT NO. 15650018**; and

WHEREAS, the Principal is required to furnish a bond in connection with the Contract, providing that if Principal, or any of it or its subcontractors, shall fail to pay for any materials, provisions, or other supplies or teams used in, upon, for or about the performance of the Work contracted to be done, for any work or labor thereon of any kind, or claims to which reference is made in Section 9554 of the Civil Code, the Surety of this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), lawful money of the United States of America, being not less than one hundred percent (100%) of the Contract Amount, 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 presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, or its heirs, executors, administrators, successors, transferees, assigns, or subcontractors, shall fail to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under this Contract, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractors and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified in this bond and will also pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall inure to the benefit of any and all persons named in Section 9100 of the Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

This bond is given to comply with Sections 9550 and 9554 of the Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein, including Section 8152 of the Civil Code.

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 way 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 Contract or to the Work or to the Contract Documents.



IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their seals this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, 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.

Principal

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

(SEAL)

Surety

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

(SEAL)

*\*Note:*

*To be considered complete, both the Principal and an admitted Surety Insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign the Payment Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney must be attached.*

END OF DOCUMENT