



REQUEST FOR PROPOSALS (RFP)

Vended Meal Program for Emeryville Child Development Center

Bid Timeline Schedule		
Date	Time	Activity
June 12, 2023	By 5:00 PM	RFP Issued
June 19, 2023	12:00 PM	Questions to RFP Due Submit all questions lporter@emeryville.org .
June 21, 2023	By 5:00 PM	Addendum Issued/Posted on Website by City Staff <i>(Addendum may include revisions and/or responses to RFP/Questions)</i>
June 26, 2023	10:00AM	<u>Bid Due Date</u> <u>Bid Submittals to & Bid Opening Location:</u> City of Emeryville City Clerk's Office 1333 Park Ave. Emeryville, CA 94608
Contact person for the above RFP: <u>Lois Porter</u> Email: lporter@emeryville.org		

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EXHIBITS

<u>BID SUBMISSION REQUIREMENTS TABLE</u>		MUST be submitted with Bid (√)
Exhibit A	Specifications /Scope of Work Reference to Attachments	√
Exhibit B	Bid Submittal Form	√
Exhibit C	Exceptions to Specifications/Requirements	√
Exhibit D	Sample Professional Services Contract	
Exhibit E	Insurance Requirements	
Exhibit F	W-9	√

I. STATEMENT OF WORK

- A. **Intent:** It is the intent of these specifications, terms and conditions to seek Bids for a *Vended Meal Program for the Emeryville Child Development Center*. The City reserves the right to award any combination of services or reject all Bids.

The City intends to award a Contract to the bidder selected as the lowest responsive, responsible bidder based on the ‘best value’ concept and meets the City’s requirements.

- B. **Scope of Services:** The City of Emeryville is issuing this Request for Proposals (including all attachments hereto) (“RFP”) in order to solicit Bids to furnish all necessary tools, materials, labor, and supervision (including cost of insurance and all payroll taxes on such labor) to provide the above service(s)/product(s), all as more particularly described in the applicable Exhibits mentioned below.
1. **Specifications:** Please refer to ‘*Exhibit A–Specifications/Scope of Work*’ for details on the
 2. **Bid Submittal Form:** Please refer to ‘*Exhibit B–Bid Submittal Form*’ for details on Bid submission requirements and required documents.

II. BID SUBMITTAL REQUIREMENTS

I. Bid Submittal Delivery Method:

Submittal shall be by hard copies to the location specified in the ‘Bid Timeline Schedule’ table on the front cover.

You must include 2 copies including original.

Bid Submittal Contents:

Bid submittal should be in the following order (Items 1-3):

(also outlined in the ‘*Bid Submission Requirements Table*’ after the Table of Contents page.)

1. **Exhibit B - Bid Submittal Form:** Please complete this form and provide any of the required information as applicable below and include any requested documents as required.
 2. **Exhibit C - Exceptions to Specifications/Requirements:** Mark ‘X’ by the applicable terms.
 - a. ☐ No exceptions or alternative products are permitted.
 - b. ☒ Bidder must provide with the submittal, utilizing the form in ‘Exhibit C –Exceptions to Specifications/Requirements’, any and all exceptions to either the specifications and/or the terms and conditions contained herein. Failure to note exceptions shall be interpreted to convey the bidder agrees to perform in the manner described and/or specified in this RFP.
 3. **Other Required Documents:** Please submit any additional documents specified in any of the above or described in the *Scope of Services/Specifications in Exhibit A*.
- A. **Other Bid Submittal Information:**
1. **Submittal Deadline:** Bid submittals will be received until the due date and time specified in the Bid Timeline Schedule tables on the front cover of this bid and/or in Schedule of Events as determined by www.time.gov. Late submittals will not be accepted. Telephone, telegraphic, or faxed Bids will not be accepted. It is the bidder’s responsibility to see that their Bids have sufficient time to be received by the office and location specified in this bid before the submittal deadline. Bidder assumes the burden of delivery

A tabulation of Bids will be available within a reasonable time after the due date. Bid submission/results will be posted accordingly on the City's website: www.emeryville.org

2. **Modifications and Withdrawal:** Submittals may not be modified after Bid due date. Bidders may withdraw Bids at any time before the Bid opening, provided that a request in writing, executed by the bidder or its duly authorized representative for the withdrawal of such Bid, is filed with the City prior to the time fixed for the opening of Bids. The withdrawal of a Bid shall not prejudice the right of a bidder to file a new Bid.
3. **California Public Records Act, Confidential/Proprietary Information.** All documents submitted in response to this RFP will become the property of the City and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. Any confidential or proprietary information as defined by the California Public Records Act ("Confidential Information") must be enclosed in a separate folder or envelope clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" and submitted with the rest of the Bid. Bid submittals where **all** information is so marked will be disregarded and made available pursuant to the CPRA. However, bidder (by virtue of submitting its Bid or any Confidential Information) acknowledges that City has not made any representations or warranties that Confidential Information is exempt from disclosure under Applicable Laws.

III. **INSTRUCTIONS TO BIDDER**

A. **Reservation of Rights:**

The City reserves the right to reject any or all Bids and to waive informalities, minor irregularities, and minor variations from specifications in Bids received. The City may accept any item or group of items of any Bid which will produce the most satisfactory results suited to the City's requirements.

The Contract shall be awarded to the lowest responsive, responsible bidder based on the "best value" concept and meets the city requirements.

If no responsive bids are received, the services performed, or the supplies or equipment furnished may be obtained without further competitive bidding. Submittals must be valid for 60 days following the submission deadline.

B. **Schedule of Events:**

The following schedule details key dates and times related to this RFP. City reserves the right to revise this schedule.

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- C. Questions, Interpretations, or Corrections of Bid Document:** Questions regarding this RFP must be submitted in writing via email with the referenced RFP number clearly stated in the 'subject area' to the email address at: lporter@emeryville.org. Questions shall arrive no later than the time specified in the above table under Schedule of Events. Bidder shall promptly notify kburrowes@emeryville.org of any error, omission, or inconsistency that may be discovered during the examination of the RFP.

Any questions or comments directed to persons or addresses other than specified in the preceding sentence or received after the deadline specified in the preceding sentence, will not be addressed. Bidder's company name, address, phone number, email address, fax number, contact person, and reference to this RFP must be included with the questions or comments. The City's response to questions or comments will be in the form of an addendum to be posted on the website by the time/date specified above under Schedule of Events.

All clarifications, corrections, or changes to this RFP will be made by a formal written addendum or addenda to the RFP issued by the City of Emeryville ("Addendum" or "Addenda") only. Each Addendum (if any) shall automatically become part of this RFP and thus part of the Contract Documents. "Contract Documents" means, collectively, this RFP, the chosen bidder's written Bid (as modified by any written best and final offer accepted by the City of Emeryville), the final contract executed between the City of Emeryville and the chosen bidder, and any amendments executed in writing by the City of Emeryville and the chosen bidder.

Bidder shall not rely upon interpretations, corrections, or changes made in any other manner, (e.g. whether by telephone, in person, or any type of writing) other than an Addendum. Interpretations, corrections, and changes shall not be binding unless made by Addendum. All Addenda issued will be posted on the City of Emeryville's website at www.emeryville.org. Notifications may (but are not required to) be sent to all known bidders by email; however it is the bidder's sole responsibility to ascertain that it has received all Addenda issued for this RFP.

Communication During Bid Process

All communications with regard to any aspect of this solicitation/bid must be in writing and addressed only to Lois Porter at lporter@emeryville.org.

- D. Prices, Notations, and Mistakes:** No charge shall be allowed for the preparation of a response to this RFP or negotiation or drafting of any other Contract Documents. All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent and initialed in ink by the person who signs the Bid. Prices shall be stated in units and bids made separately on each item as provided in Exhibit C. Prices quoted shall be F.O.B. In case of conflict, unit prices will govern. Where there is a conflict between words and figures, words will govern. The total amount of the submittal will be the sum of the total prices of all items in the submittal schedule. The total price of the unit price items will be the product of the unit price and the estimated quantity of the item. In case of discrepancy between the unit price and total price of an item, the unit price shall prevail. If the unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, it shall be the amount obtained by dividing the amount set forth as the total price by the estimated quantity of the item.
- E. Agency Compliance/License:** Bidder shall comply with all applicable Federal, State of California, and local laws, rules, and regulations (including labor laws, and the City of Emeryville Municipal Code) and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the services, and any provision of equipment and material ("Applicable Law"). All transactions related to any of the Contract Documents shall be governed by the laws of the State of California, and trial of any action brought in connection with the RFP or the Contract Documents shall be held exclusively in a state court in the County of Alameda, California.

- F. Term of Contract:** The City intends to award one (1) Contract for services to begin September 1, 2023 through June 30, 2024 with the option to renew.

The City has and reserves the right to suspend, terminate, or abandon the execution of any work by the selected Bidder without cause at any time upon giving to the selected Bidder prior written notice. In the event that the City should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. The City may terminate the contract at any time without written notice upon a material breach of contract and substandard or unsatisfactory performance by the selected Bidder. In the event of termination with cause, the City reserves the right to seek any and all damages from the selected Bidder. In the event of such termination with or without cause, the City reserves the right to invite the next highest ranked bidder to enter into a contract or re-bid the project if it is determined to be in its best interest to do so.

1. The City may, at its sole option, terminate any contract that may be awarded as a result of this RFP at the end of any City fiscal year (i.e. each July 1st through each June 30th), for reason of nonappropriation of funds. In such event, the City will give Contractor adequate notice that such function will not be funded for the next fiscal period.
2. By mutual agreement, any contract which may be awarded pursuant to this RFP, may be used again for additional year(s) to purchase additional items at agreed prices without further competitive bidding. All other terms and conditions would remain the same.

- G. Terms of the Offer:** City of Emeryville's acceptance of bidder's offer shall be limited to the Contract Documents, unless expressly agreed in writing by the City of Emeryville. Each bidder must provide in **Exhibit D-Exceptions to Specifications/Requirements** any proposed changes to the terms hereof (including any insurance, indemnification, and bid security language or requirements). Bids offering terms other than those shown herein may be declared non-responsive and may not be considered.

- H. Award of Contract:** Any award shall be made in accordance with Applicable Laws

1. Evaluation Criteria:

Award will be made to the responsive, responsible bidder based on a 'best value' concept.

2. Selection Process:

- a. The department(s) will recommend award to the bidder who has submitted the Bid that best serves the overall interests of the City and attains the 'best value' concept. Award may not necessarily be made to the bidder with the lowest price.
- b. The City has the right to decline to make any award for any reason.
- c. Approval of the City Council is required.

3. Terms and Conditions: Final contract terms and conditions will be negotiated with the selected bidder and will include but is not limited to all of the terms and conditions of this RFP and in **Exhibit G-General Terms and Conditions**. Contract may be in a form of a purchase order, a contract, or both.

4. Notice of Award: Upon written notification of award, the chosen bidder must provide applicable insurance certificates, business license, and any other requirements described in this RFP within the requested time frame. Failure to provide the required documents within the time allowed may result in withdrawal of award.

The contact information once awarded will be:

City of Emeryville

Lois Porter

1220 53rd St.

Emeryville, CA 94608

(510)-596-4348 or email: lporter@emeryville.org

- a. Business License: The selected bidder will be required to obtain a City of Emeryville business license and keep it current during the period of performance on the contract resulting from this RFP. Questions regarding City of Emeryville business licenses may be addressed to the City of Emeryville, Finance Department, 510-596-4325
 - b. Insurance Requirements: See attached Insurance Requirements **Exhibit E**.
- I. Protests**: Any protest of the proposed award of this solicitation to the respondent deemed the lowest responsible respondent must be submitted in writing to the City no later than 5:00 p.m. on May 10. The initial protest must contain a complete statement of the basis of the protest.
- 1. The protest must state the facts and refer to the specific portion of the document or the specific statute that form the basis for the protest. The protest must include the name, address, and telephone number of the person representing the protesting party.
 - 2. The party filing the protest must concurrently transmit a copy of the initial protest to the bidder deemed the lowest responsible bidder.
 - 3. The party filing the protest must have actually submitted a Bid on the Project. A subcontractor of a party filing a Bid on this Project may not submit a Bid Protest. A party may not rely on the Bid Protest submitted by another Bidder but must timely pursue its own protest.
 - 4. The procedure and time limits set forth in this Section are mandatory and are the Bidder's sole and exclusive remedy In The Event Of Bid Protest. The Bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further to pursue the Bid Protest, including filing of a challenge of the award pursuant to the California Public Contracts Code, filing of a claim pursuant to the California Government Code, or filing of any other legal proceedings.
 - 5. The City shall review all timely protests prior to formal award of the Bid. The City shall not be required to hold an administrative hearing to consider timely protest but may do so at the option of the City Manager. At the time of the City Council's consideration of the award of the bid, the City Council shall also consider the merits of any timely protest. The City Council may either accept the protest or award the bid to the next lowest responsible bidder or reject the protest and award to the lowest responsible bidder.
 - 6. These bid protest procedures shall not limit the City Council's ability to reject all bids.

IV. EXHIBITS – ATTACHMENTS *(See following as listed in Table of Contents)*

EXHIBIT A (Page 1 of 4) **Specifications/Scope of Work**

ABOUT City of Emeryville Child Development Center

The Child Development Programs Division operates a state licensed toddler and preschool program for up to 40-60 children ages one to five years at Emeryville Child Development Center (i.e. Center) at 1220 53rd Street. The Center is approximately 12,000 square feet and can consist of one infant room, wobbler/toddler rooms, three pre-Kindergarten rooms, multipurpose room, full-service kitchen, toilet rooms, staff offices, storage areas, lobby area, and three age-appropriate play areas. The program was the first city-run childcare center in California. The program has been in operation since 1979 and located in its current facility since 1991.

The City of Emeryville is seeking the services of a qualified outside food vendor to provide lunch and milk service for approximately 40-60 school children ages 1 to 5 years old under the Child and Adult Food Program guidelines.

SCOPE OF WORK

City of Emeryville Child Development Center is seeking an organization that is familiar with the following programs:

- The Child and Adult Care Food Program (CACFP)

The ideal food vendor will have the following qualifications:

- ❖ Provide child friendly, nutritious, tasty, and visually appealing meals.
- ❖ Provide fresh fruit and/or vegetable with every meal.
- ❖ Provide whole and low-fat milk with each meal.
- ❖ Provide consistent quality control.
- ❖ Provide nutrition education.
- ❖ Provide responsible account manager.
- ❖ Has previous experience working with preschool sites.
- ❖ CACFP compliant meals/snacks (all meals must be eligible for state and federal reimbursement).
- ❖ CACFP menu recordkeeping and planning and reporting necessary to receive reimbursements.
- ❖ Be familiar with State and Federal regulations pertaining to operations in a preschool setting.
- ❖ Comply with all State, County and City health and sanitation requirements. City of Emeryville Child Development Center reserves the right to inspect Vendor's facilities at any time during the contract period.
- ❖ Have valid certifications and insurance documents.

Food Qualifications:

- ❖ Emphasize fresh and all-natural ingredients, – not overly processed, fried, or microwaved product meals.
- ❖ Organic and locally produced ingredients whenever possible.
- ❖ All milk must be free of BST growth hormone.
- ❖ Meats are free of nitrates and nitrites.
- ❖ No high fructose corn syrup or added sugar.

- ❖ No artificial trans fats.
- ❖ No artificial colors, flavors, or sweeteners.
- ❖ No peanuts

VENDOR RESPONSIBILITIES

The Vendor shall be responsible for the following:

- Delivering meals to the Center at times specified by City of Emeryville Child Development Center.
- Condition or care of meals until they are delivered to the Center.
- Providing to City of Emeryville Child Development Center no later than one (1) week prior to the end of each month, a monthly menu covering the meals to be served for the following month.
- Notify center of menu changes and send updated menus.
- Providing City of Emeryville Child Development Center with bag lunches for field trips when requested. All meals for field trips must meet the appropriate meal pattern requirements.
- Maintaining the proper temperature of the lunch until it is delivered.
- Maintaining all necessary records on the nutritional components and quantities of the meals served at City of Emeryville Child Development Center and making said records available for inspection by State and Federal authorities upon request.
- Provide an attractive plant based alternative offering one day a week, needs to meet CACFP compliant and to be eligible for state and federal reimbursement.
- Provide alternative meal options to meet individual dietary restrictions.

City of Emeryville Child Development Center Responsibilities

City of Emeryville Child Development Center will be responsible for the following:

- Monthly ordering of the number of meals needed for each day of the following month.
- Notify vender immediately of changes in enrollment.
- Condition and care of meals once accepted upon delivery.
- Service of meals to children
- Maintenance of the premises, equipment, and facilities where meals will be served, and will adhere to the highest standards of cleanliness and sanitary practices to ensure compliance with state and local health and sanitation requirements related to the food service program.

- Distribution and collection of applications, determining child eligibility, counting meals served in accordance with eligibility, consolidation of counts of meals served to children, and claiming of meals for reimbursement.
- Maintenance of records required to substantiate free and reduced-price meals.
- Payment of invoices to the vendor using net 30 terms.
 - No payment will be made for meals that are spoiled or unwholesome at time of service, do not meet the specifications, or do not otherwise meet the requirement of the agreement. However, no deduction will be made unless City of Emeryville Child Development Center provides written notification of the meal service for which the deduction is to be made, specifying the number of meals for which we intend to deduct payment and setting forth the reasons for the deduction. City of Emeryville Child Development Center will provide such notice no later than three (3) business days after the date the meal was served.

PROPOSAL SPECIFICATIONS

Contract Period:

The contract period will be July 1, 2023, through June 30, 2024, and delegate authority to the City Manager with the option to renew the contract for fiscal years 2024/25, 2025/26, 2026/27, 2027/28.

Proposals must include:

- Description of services including but not limited to the following:
 - Menu development rationale
 - Placing orders
 - Equipment needed
 - Nutrition education
 - Duration and extent of experience in the operation of Center meal services
 - Additional services
- Cost per meal (lunch)
- Sample 21-day cycle menu for breakfast, lunch and snacks including nutritional information showing compliance with federal and state meal program requirements.
- A copy of current health certifications for the food service facility in which it prepares meals for the CACFP.
- Proof of liability insurance and proposed indemnity language based on the City's insurance requirements.
- Materials/supplies provided.
- 3 professional references

For contracts in excess of \$100,000, include the following certifications:

- Certificate of Independent Price Determination
- Certification Regarding Debarment, Suspension, and Ineligibility
- Certification Regarding Lobbying
- Disclosure of Lobbying Activities

SELECTION OF VENDOR**The selection of a vendor shall be based upon:**

- Description of services
- Menu appeal
- Proposed price
- Confidence in the provider
- Compliance with RFP specifications
- Input by staff and parents of Center participants

City of Emeryville retains the right to terminate services if the service is unsatisfactory. City of Emeryville reserves the right to reject all proposals.

Interested vendors must submit 2 copies of their response to this Request for Proposals via email, mail or hand delivered no later than **May 8, 2023, by 5:00 pm**. Late proposals will not be considered under any circumstances. **Please note the contract can only be for 1 year only with the option to renew up to 4 years. The City seeks bid proposals with updated costs for each fiscal year if contract is extended.**

Via Email, Mail or Hand Delivered:

City of Emeryville Child Development Center
1220 53rd Street
Emeryville, CA
Attention: Lois Porter
lporter@emeryville.org

E-mail:

Vendors are requested to submit any questions regarding the RFP in writing via email to Lois Porter at lporter@emeryville.org. Once proposals are reviewed, vendors may be contacted for a follow up interview and/or oral presentation.

Submittals must be valid for 60 days following the submission deadline.

EXHIBIT B
BID SUBMITTAL FORM

TO THE CITY OF EMERYVILLE: In compliance with the notice inviting bids, the undersigned hereby proposes to furnish all necessary tools and equipment, materials, labor, and supervision (including cost of Workers' Compensation Insurance and all payroll taxes on such labor) to provide the above, in accordance with the Special Provisions and Specifications and City of Emeryville General and Work Conditions therefore, and further agrees to enter into a Contract therefore, at the prices listed in the accompanying proposal. All costs, except sales tax, must be included in the submittal.

Note:

- a. Submittal is to include the number of calendar days delivery will be made after receipt of a City of Emeryville purchase order,
- b. This purchase requires Council award. The City will notify bidders as soon as possible of the intent to award to a specific bidder and the probable Council award date.

A. Please indicate the total cost here and attach all required documents to follow.

COST INFORMATION:

TOTAL COST	\$

_____TOTAL (written amount)

This bid will be awarded based upon the total bid amount as written in words. Where there is a discrepancy between words and figures, WORDS WILL GOVERN.

Submitted by:

COMPANY NAME: _____

FULL ADDRESS (Not a P.O. Box): _____
(Address, City, State, Zip)

PHONE NO.: _____ **EMAIL:** _____

YOUR NAME & TITLE: _____

YOUR SIGNATURE: _____ **DATE:** _____

By signing above, bidder certifies that all information above and submitted with this bid is true and the representations made herein are made under penalty of perjury. Note: Providing false information may result in criminal prosecution or administrative sanctions.

RFP-VENDED MEAL PROGRAM FOR ECDC

EXHIBIT C
EXCEPTIONS TO SPECIFICATIONS/REQUIREMENTS

☐ PLEASE CHECK THIS BOX IF YOU HAVE NO EXCEPTIONS TO OUR REQUIREMENTS

List below requests for clarifications, exceptions, and amendments, if any, to the RFP and its exhibits, and submitwith your Bid response.

The City is under no obligation to accept any exceptions and such exceptions may be a basis for Bid disqualification.

Item No.	Reference To:		Description
	Page No.	Paragraph No.	

Bidder Name

Bidder Signature

Date

RFP-VENDED MEAL PROGRAM FOR ECDC

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Bidder Signature

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RFP-VENDED MEAL PROGRAM FOR ECDC

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Item No.	Reference To:		Description
	Page No.	Paragraph No.	

_____ Bidder Name	_____ Bidder Signature	_____ Date
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RFP-VENDED MEAL PROGRAM FOR ECDC

EXHIBIT C

EXCEPTIONS TO SPECIFICATIONS/REQUIREMENTS

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	Page No.	Paragraph No.	

_____ Bidder Name	_____ Bidder Signature	_____ Date
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EXHIBIT D

P R O F E S S I O N A L S E R V I C E S C O N T R A C T

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **COMPANY / CONTRACTOR NAME (INC, LLP, LLC)** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

W I T N E S S E T H T H A T

WHEREAS, the City desires to engage Contractor for *Project Name and Brief Description*; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

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

WHEREAS, the Contractor desires to provide such services; and,

WHEREAS, the public interest will be served by this Contract; and

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

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 Services

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **END DATE**. The Parties may, by mutual, written consent, extend the term of this Contract.

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 Additional Work Changes

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

3.2 Total Compensation Amount

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FORTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$45,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail

charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 *Assignment of Contract*

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 *Responsibility of Contractor and Indemnification of City*

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.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 Independent Contractor

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 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.

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect 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. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

4.6 *Conflicts of Interest*

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

4.7 *Confidentiality*

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 *Discrimination Prohibited*

The Contractor covenants and agrees that in performing the Services required under this Contract, the 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.

4.9 *Licenses, Certifications and Permits*

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the 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 Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 *Key Personnel*

The Project Manager is / Key Personnel are necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team

without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements

4.13.1 Compliance

At 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.

4.13.2 Applicability

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.

4.13.3 Non-Compliance

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.

4.13.4 Living Wage

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 **\$50.00 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.

4.13.5 Minimum Wage and Paid Sick Leave

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.

4.14 *California Labor Requirements*

4.14.1 Prevailing Wage Requirements

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 Services are 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.

4.14.2 Registration

If the Services are 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 Services 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.

4.14.3 Labor Compliance Oversight

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 Services, 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.

4.14.4 Workers’ Compensation

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.”

4.14.5 Event of Default

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. TERMINATION

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

6. 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.

7. ENTIRE AGREEMENT

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. 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.

11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between *Project Manager* for the City and *Point of Contact* for the Contractor:

CITY	CONTRACTOR
<i>Project Manager, Title</i>	<i>Point of Contact, Title</i>
Phone No: 510-596-4300	Phone No: 510-000-0000
E-Mail : <i>email@emeryville.org</i>	E-Mail : <i>email@contractor.com</i>

12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

CITY	CONTRACTOR
<i>Department Head, Title</i> <i>Street Address</i> Emeryville, California 94608 Phone No: 510-596-4300 E-Mail : <i>email</i> @emeryville.org	<i>CEO / President, Title</i> <i>Street Address</i> <i>City, State, Zip Code</i> Phone No: 510-000-0000 E-Mail : <i>email</i> @contractor.com
<i>with a copy to:</i> <i>Project Manager, Title</i> <i>Street Address</i> Emeryville, California 94608 Phone No: 510-596-4300 E-Mail : <i>email</i> @emeryville.org	

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.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

17. WAIVER

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

18. OTHER REQUIREMENTS

Compliance with terms and conditions set forth in **Exhibit C** is ☐ **required** / ☐ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

SIGNATURES ON FOLLOWING PAGE

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES 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:

City Attorney

Dated: **CITY OF EMERYVILLE**

City Manager

Dated: **COMPANY / CONTRACTOR NAME (INC, LLP, LLC...)**

Type Name of Signatory, Title *(Signature)*

<i>Attach: W-9 Form</i>	<i>Attach: Business License Certificate</i>



EXHIBIT E
Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **COMPANY / CONTRACTOR NAME (INC, LLP, LLC...)**.

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

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:

□ **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.

☐ 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*

EXHIBIT F - W-9

Form
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
<input type="checkbox"/> Individual/sole proprietor or single-member LLC	Exempt payee code (if any) _____
<input type="checkbox"/> C Corporation	Exemption from FATCA reporting code (if any) _____
<input type="checkbox"/> S Corporation	(Applies to accounts maintained outside the U.S.)
<input type="checkbox"/> Partnership	
<input type="checkbox"/> Trust/estate	
<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____	
Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	
<input type="checkbox"/> Other (see instructions) ► _____	
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	
____ - ____ - ____	
or	
Employer identification number	
____ - ____	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

CITY GENERAL REQUIREMENTS APPENDIX

_____. (“Contractor”) agrees to comply with the requirements set forth below.

A. Indemnity

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 Contractor’s 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 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 City, its members, officers, agents, employees and volunteers shall survive termination of the Agreement.

Contractor shall also agree to indemnify, defend and hold harmless City, and its members, officers, employees, agents and volunteers for any costs, including attorney’s fees, expenses, damages, or liability that City may incur as a result of any proceedings chagrining infringement of any patent, copyright, or trademark by use of the produce and services furnished by Contractor.

B. Business License Requirements

Contractor shall obtain a business license from the City of Emeryville.

C. City Labor Standards

If the Agreement provides for compensation to Contractor of \$25,000 or more within a single fiscal year, then Contractor shall comply with the requirements of the 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 Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City’s laws. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Agreement, 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. 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, City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance. Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Agreement. “Living Wage” means no less than \$17.98 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. In the event that compliance with the Living Wage Ordinance is not required, the Contractor may still 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.

D. California Labor Requirements

1. Prevailing Wage Requirements

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 Services are 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.

2. Registration

If the Services are 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 Services 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.

3. Labor Compliance Oversight

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 Services, 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.

4. Workers' Compensation

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. Insurance Requirements

Contractor agrees to comply with the insurance requirements as set forth in Exhibit B.