



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

**THIS PROFESSIONAL SERVICES CONTRACT** (“Contract”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **ECONOMIC AND PLANNING SYSTEMS, INC** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

### WITNESSETH THAT

**WHEREAS**, the City desires to engage Contractor for creation of a new inclusionary housing policy in conjunction with an update of the City’s development impact fee program); 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 **JUNE 15, 2027**. 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 **FOUR HUNDRED THIRTY THREE THOUSAND AND FOUR HUNDRED AND NINE DOLLARS AND NO CENTS (\$433,409.00)**, 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***

All of the individuals listed in Exhibit A 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 **\$19.08 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),

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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.”



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**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 **Miroo Desai** for the City and **Carla Violet** for the Contractor:

CITY	CONTRACTOR
Miroo Desai, Planning Manager Phone No: 510-596-3785 E-Mail : mdesai@emeryville.org	Benjamin C.Sigman, Managing Principal Phone No: 510-841-9190 E-Mail : bsigman@epsys.com

## **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:

<b>CITY</b>	<b>CONTRACTOR</b>
Chadrick Smalley, CDD Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4355 E-Mail : csmalley@emeryville.org  <i>with a copy to:</i> Miroo Desai, Planning Manager 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-3785 E-Mail : mdesai@emeryville.org	Benjamin C. Sigman 1330 Broadway, Suite 450 Oakland, CA 94612 Phone No: 510-841-9190 E-Mail : bsigman@epsys.com

## **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:

DocuSigned by:  
*John Kennedy*  
2C934D02DB55467...  
\_\_\_\_\_  
City Attorney

Dated: CITY OF EMERYVILLE

\_\_\_\_\_  
LaTanya Bellow, City Manager

Dated: ECOMONIC AND PLANNING SYSTEMS, INC

06/18/2025  
\_\_\_\_\_  
Signed by:  
*Benjamin C. Sigman*  
5CF8E3CB1E4F408... (Signature)  
\_\_\_\_\_  
Benjamin C. Sigman, Managing Principal

Attach: W-9 Form	Attach: Business License Certificate



**Fehr & Peers**

## Inclusionary Housing Policy and Development Impact Fee Update Study

The City of Emeryville originally adopted its Affordable Housing Set-Aside (AHSA) Ordinance in 1990 to address a shortage of affordable housing available to moderate, low, and very low-income households. In 2014, a new Ordinance revised the City's housing program and renamed it the Affordable Housing Program (AHP). The AHP Ordinance covers both for-sale and rental housing projects:

- The AHP requires a set-aside of Below Market Rate (BMR) units in new ownership developments of 10 or more units.
- The AHP Ordinance requires an impact fee on all new rental housing projects or in-lieu BMR unit production.

The current AHP Ordinance is implemented through the City of Emeryville Economic Development and Housing Division.

The City of Emeryville also offers a local "Development Bonus Program" which increases allowable height and/or density in exchange for affordable housing and other community benefits. The Program emphasizes affordable housing by requiring that at least half of the points earned to generate a development density bonus come from the provision of affordable housing. The Program relies on the City's entitlement process to authorize projects seeking a bonus, typically through approval of a conditional use permit by the City Council or by way of the Planned Unit Development process.

The City of Emeryville is planning to revise its Affordable Housing Program through an Inclusionary Housing Policy Study and Development Impact Fee Update Study (Study). Specifically, the City wants to eliminate its existing Affordable Housing Impact Fee and replace it with an inclusionary zoning ordinance. There is no best way to create an inclusionary housing policy. However, the details of a new inclusionary housing policy should be specific to the City of Emeryville's other housing programs, local market conditions, and the policy goals of the City. This draft Scope of Work identifies a work program to study, craft, vet, and codify an inclusion housing policy for the City of Emeryville.

In conjunction with creation of a new inclusionary housing policy, the City of Emeryville is seeking a comprehensive update to its development impact fee programs. This update would cover the Transportation Fee, Parks and Recreation Fee, and Non-Residential Development Affordable Housing Impact Fee. Simultaneous preparation of an inclusionary housing policy and update to development impact fees allows for holistic evaluation of the City's major exactions from new development projects. The Study will support City evaluation of trade-offs across the various policies and programs to seek desired outcomes, considering the effect that the policies and programs will have on the financial viability of new development projects in the City of Emeryville.



## Task 1 Project Initiation

Economic & Planning Systems, Inc. (EPS) will commence the Inclusionary Housing Policy and Development Impact Fee Update Study (Study) by conducting background research and participating in a project kick-off meeting with City staff. Before the kickoff meeting, EPS will provide an initial data request to the City. EPS anticipates that background information may include past housing policy, market analysis, or related studies, code or policy language from the City's original Affordable Housing Set Aside ordinance, and data concerning recent housing projects, including housing program compliance detail (e.g., City or state density bonus use) and development impact fees charged. EPS will review documents, data, and other pertinent information to inform Study direction.

After the initial information review, the "EPS Team," which includes Fehr & Peers for the Transportation Impact Fee update, will meet with City staff to discuss the Study. A key topic will be how the current Affordable Housing Program is serving (or not serving) the needs of the City, and the specific objectives of the desired inclusionary housing policy. The kickoff meeting will also cover the current development impact fee programs and objectives for the fee update. The EPS Team will provide an overview of the data needs of the Study (e.g., impact fee project lists). In addition, the meeting will be an opportunity to review the scope of work, timeline for the engagement, roles and responsibilities, and other administrative/project management topics. After the kickoff, EPS anticipates the Study will require recurring check-in meetings with staff. The **Task 1** budget proposal includes 24 check-in meetings between EPS and City staff over the course of the project.

## Task 2 Policy Landscape and Survey of Peer Jurisdictions

An essential input informing the Study will be a survey of the regional housing policy and development impact fee landscape. In collaboration with City staff, EPS will select six (6) Bay Area jurisdictions for policy and program review. EPS will also review policy briefs and other relevant research related to inclusionary housing policy. This supplementary research will be limited and targeted, covering four to eight (4-8) studies, papers, policy guidance documents that address Emeryville policy concerns and/or City goals for the new inclusionary Housing policy.

The EPS survey will evaluate the affordable housing inclusionary housing policies and development impact fees in each of the six (6) jurisdictions. Topics covered by the survey will include:

### *Inclusionary Housing*

- What share of units are provided at affordable prices or rents?
- Are affordable units identical to market-rate units? What design standards apply?
- Are affordable units distributed throughout the market-rate project?
- Which income groups do the affordable units serve? Are resident services provided?
- Are affordable units for extremely or very low-income households, or households with disabilities?
- Are residential support services provided for specific unit types?

### *Development Impact Fees*

- What types of development impact fee programs exist?
- What are the current development impact fee levels?
- What projects are included or exempted from development impact fees?
- What is the total development impact fee burden applied to typical large-scale projects?

As part of this **Task 2** survey, EPS will review municipal code and identify unique inclusionary housing policy facets and policy terms. EPS also will interview staff at selected jurisdictions to review the inclusionary policy, understand how it is functioning, and to determine notable pros or cons associated with any aspect of the local housing policy. In addition, EPS will discuss fee programs during the staff interviews. This survey will provide important context to City staff and policy makers as they consider program alternatives.

**Task 2 Meeting:** EPS will participate in a Work Session with City staff to review **Task 2** research and findings, and to consider policy options for the City of Emeryville. The goal of the meeting will be to collaborate on policy direction and to identify five (5) inclusionary housing policy scenarios for feasibility testing (in **Task 5**). Unique policy scenarios may vary by overall percentage of inclusionary housing and/or affordability levels.

**Task 2 Deliverable:** EPS will produce a **Task 2** Memorandum summarizing the policy and fee program research and survey findings. As part of the deliverable, EPS will create one or more summary matrices that can be incorporated into final documents and presentations. EPS will accept and address one round of consolidated comments on a draft before finalizing the deliverable.

## **Task 3     Impact Fee Update Data Collection and Analysis**

### *Development Assumptions*

The EPS Team will work with City staff to assemble the land use assumptions, growth projections, service standards, and related capital requirements that form the basis of the updated fee program. Among other resources, the EPS Team will rely on the City's General Plan, transportation planning work, regional forecasting, and related technical analyses. This data development effort will also establish land use categories applicable to the fee programs based on prior studies, nexus considerations, and implementation factors. The EPS Team will define other key assumptions for the fee update, such as population and employment densities for each land use category.

Fehr & Peers will be responsible for preparing updated growth projections for the Study. This update will start with the latest Alameda County Transportation Commission (CTC) countywide travel demand model and will calculate the projected growth in the City of Emeryville based on land use information contained in that model. Fehr & Peers will compare the growth projections from the Alameda CTC model to the General Plan Buildout and ensure that the land use information reflects all recently approved and proposed development projects in the City.

### *Development Impact Fee Capital Improvements and Existing Deficiencies*

The EPS Team will coordinate with the City to collect and assemble the lists of facilities and associated costs that will be covered in whole or in part by the fee program. As a starting point, the EPS Team will review the facilities included in existing fee programs and recent planning and

engineering documents, such as the City's Capital Improvement Plan and Active Transportation Plan. The EPS Team will also solicit input from City staff to remove, revise, or add facilities to the lists. A critical component of the transportation analysis will be identifying transportation system locations that do not meet performance standards and are currently deficient. Ultimately, the updated impact fee capital improvements lists will reflect completed projects, long term capital goals, service standards, and other factors.

EPS assumes the City will provide most planning-level cost estimates for projects on the capital improvement lists, though the Fehr & Peers budget includes planning-level cost estimates for up to 10 new projects using typical unit costs for improvements related to pedestrians and cyclists, traffic signals, roundabouts, and other typical traffic engineering components.<sup>1</sup> As part of **Task 3**, the EPS Team will review the appropriateness of the development impact fee capital improvement program from a nexus standpoint to identify any weaknesses that might represent potential legal challenges. In reviewing cost estimates, the Team will ensure that estimates include all appropriate items, such as land acquisition, design and engineering, construction, program administration, and other relevant costs.

## Task 4 Development Impact Fee Nexus Analyses

The EPS Team will prepare the nexus analysis cost allocation for the Transportation, Parks and Recreation, and Non-Residential Development Affordable Housing Impact Fee programs. This technical effort will establish the maximum allowable fee level for each impact fee category. The fees will reflect the capital improvement lists and associated costs from **Task 3** as well as an additional administrative costs for implementation and oversight of the fee programs. The nexus study is a technical analysis required by law. Later in the study process (**Task 7**), the Study may recommend fee levels that are less than the maximum allowable fees that are determined by nexus analysis, based on regional competitiveness, feasibility, City priorities, and other considerations.

### ***Task 4.1: Transportation Fee Calculations***

Fehr & Peers will be responsible for the Transportation Development Impact Fee nexus analysis.

The first step in the transportation nexus analysis will be to estimate the magnitude of each transportation system deficiency (locations identified as currently deficient in **Task 3**) and to identify appropriate discounts to the cost of needed capital improvements, isolating costs that can be included in the fee. Law prohibits fee programs from charging impact fees for existing deficiencies.

The next step will be to apportion capital improvement costs by establishing the nexus between new development in Emeryville and the need for and cost of transportation improvements. Fehr & Peers assumes that this analysis will be done using the latest publicly available version of the

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<sup>1</sup> If certain capital improvements require more detailed cost estimates or involve unusual elements for which unit costs are not readily available, a civil engineering firm or general engineering contractor may need to be engaged. Additional cost estimating services are not included in the budget proposal.

Alameda CTC travel demand model and the land use growth projections prepared in **Task 3**. Fehr & Peers will use the “select link” function of the model to determine what proportion of the usage of each improvement project in the transportation fee program comes from new development in the City. These select link model runs will be conducted for one future year scenario that reflects anticipated future land use in Emeryville.

Vehicle trip generation or Vehicle Miles Traveled (VMT) demand factors will be used to assign fees based on the relative demand that each land use category places on the transportation system. Using the growth projections and trip or VMT demand factors, Fehr & Peers will calculate fees for each land use category. Fehr & Peers will work with City staff to assess the appropriateness of a trips-based versus a VMT-based transportation fee.

#### ***Task 4.2: Parks and Recreation***

The Parks and Recreation nexus analysis will allocate capital improvement costs to new versus existing development and establish defensible fee levels for new development. EPS will review each parks and recreation capital improvement project to determine whether the entire cost or a reasonable portion thereof can be attributed to new growth. The costs for projects that clearly serve both existing and new development will be allocated based on the proportional demand generated by each. The analysis will ensure that facility needs and costs associated with existing service deficiencies are not included in the fee calculations.

After identifying costs attributable to growth, the analysis will allocate resulting development impact fee improvement program costs to unique land use categories. This allocation will reflect the relative contribution of each land use type to the demand for the related improvement. Based upon the cost allocation, EPS will prepare a schedule of maximum allowable fees. The fee for each land use will be derived by dividing each land use’s respective share of capital facility costs by projected new development in that land use category.

#### ***Task 4.3: Non-Residential Development Affordable Housing Fee***

EPS will calculate affordable housing fees for non-residential development through the preparation of a commercial linkage fee nexus analysis. The nexus (i.e., “linkage”) between new nonresidential development and the demand for affordable housing derives from employment density and labor compensation estimates of future employees for each nonresidential land use type. New household formations that result from new employment will be categorized by income category (e.g., very low, low, moderate) to estimate total housing demand. The calculations consider local trends in household formation (e.g., average number of workers per household). The Fee will be based on the affordability gap between very low, low, and moderate-income household earnings and the cost of housing in Emeryville. Demand for local housing funding support generated by new non-residential development will be quantified by commercial land use category and presented as a per-building-square-foot development impact fee.

**Task 4 Meeting:** EPS will participate in a Work Session with City staff to review **Task 4** research and findings and to consider policy options for the City of Emeryville. The goal of the meeting will be to collaborate on policy direction and to development impact assumptions for feasibility testing. EPS will work with the City to determine an initial recommended fee schedule that is consistent with the technical work described above but also recognizes past fee levels, City objectives, and other factors.

**Task 4 Deliverable:** The EPS Team will produce a **Task 4** Nexus Study that covers the Transportation, Parks and Recreation, and Non-Residential Development Affordable Housing fee programs. The EPS Team will accept and address one round of consolidated comments on a draft before finalizing the deliverable.

## Task 5 Financial Feasibility Analysis

### *Subtask 5.1 Base Financial Analysis*

Financial analysis will help further inform inclusionary housing policy direction by identifying the degree to which various policy alternatives impact the economic viability of housing development. Based on a snapshot of current market conditions, EPS will evaluate a range of inclusionary housing options for rental and ownership projects. These financial tests will be based on a set of up to six (6) housing prototypes, to be identified in collaboration with City staff.

EPS will use the pro forma financial models to assess the feasibility of developing the housing prototypes in the current market with inclusionary housing policy alternatives. EPS will research the local housing market prices and development cost factors for each housing prototype, then assemble a “static” pro forma financial feasibility cash flow model for each prototype. The cash flow models will rely on market value assumptions, affordable housing rents, typical building operating expenses, and real estate development cost estimates. The analysis will solve for “residual land value” (RLV) or “return on cost” (ROC), and RLV or ROC will be the key financial model output and metric for evaluating feasibility. Across multiple scenarios, the analysis will identify whether potential inclusionary policy alternatives create an impediment to housing production and will quantitatively evaluate tradeoffs associated with different policy options. EPS will conduct one round of sensitivity analysis on up to three (3) analytic inputs to the feasibility cash flow models, potentially including development impact fee levels.

The assumptions that underly the feasibility analysis will come from market data sources, construction cost data sources, and recent EPS professional experience with Bay Area real estate development economics. Information collected for **Task 3** also will include up to five (5) interviews with local developers identified and scheduled for EPS by City staff. EPS will review market value and cost factors with local developers and solicit their input on modeling assumptions and inclusionary housing policy options. The goal of **Task 3** research and outreach is to accurately characterize the current market and financial context for housing development, and to quantify the impact a range of policy options would have.

**Task 5.1 Meeting:** EPS will participate in a **Task 5.1** Work Session with City staff to review **Task 5.1** feasibility findings, and to consider policy preferences and next steps. The goal of the meeting will be to identify a short list of three (3) policy scenarios for further evaluation. This meeting will also identify possible financial incentives for testing.

### *Subtask 5.2 Financial Analysis of Selected Policies*

EPS anticipates that additional financial analysis will be helpful in selecting a preferred Inclusionary Housing Policy. Important aspects of the Policy will be the impact of program incentives. In **Task 5.2**, EPS will conduct additional financial analysis to evaluate potential program incentives, potentially including density bonuses and/or alternative unit mix requirements. Up to six (6) housing prototypes will be tested across the three (3) policy

scenarios identified at that **Task 5.1 Meeting**. The selected policy scenarios will each be evaluated with up to three (3) unique incentives identified during **Task 5.1**.

**Task 5.2 Meeting:** EPS will participate in a **Task 5.2** Work Session with City staff to review **Task 5.2** feasibility findings, and to consider policy preferences and next steps. The goal of the meeting will be to identify a single preferred policy option.

**Task 5 Deliverable:** EPS will produce a **Task 5** Memorandum summarizing the feasibility analysis, including incentives findings. As part of the deliverable, EPS will create a summary matrix that can be incorporated into final documents and presentations. EPS will accept and address one round of consolidated comments on a draft before finalizing the deliverable.

## Task 6 Inclusionary Housing Alternative Means of Compliance

California Government Code indicates that inclusionary housing ordinances shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. In-lieu fees are anticipated to be one method of compliance for the City of Emeryville Inclusionary Housing Policy. **Task 6** will calculate in-lieu fees and identify other potential options for compliance.

### *Subtask 6.1 In-Lieu Fee Calculation*

EPS will calculate in-lieu fees based on cost to the developer of providing the inclusionary units onsite. EPS will calculate these fees on both a per-unit and per-square-foot basis for the City's consideration.

### *Subtask 6.2 Other Means of Compliance*

Based on the **Task 2** Survey and policy review, EPS will identify other potential compliance options for Staff consideration. Evaluation of the other options may require targeted additional research or technical analysis.

**Task 6 Meeting:** EPS will participate in a Work Session with City staff to review **Task 6** findings and to consider policy preferences and next steps.

## Task 7 Recommendations

EPS will provide recommendations for the City of Emeryville's Inclusionary Housing Policy and Development Impact Fee programs. Inclusionary housing recommendations will meet California Department of Housing and Community Development (HCD) objectives and requirements. Development impact fees will meet the legal requirements of the AB 1600 Mitigation Fee Act, including recent legislation such as AB 602. To this end, EPS will coordinate with the City Attorney to ensure that legal obligations are addressed. Recommendations also will identify opportunities and constraints associated with the preferred inclusionary policy and will cover specific proposed program characteristics, such as:

- Share of units that shall be provided as affordable housing and any exemptions to this inclusionary housing policy;
- Target affordability levels and their definitions, including aligning definitions with the State Housing Density Bonus Law and other State policies as may be appropriate;



- Incorporation of a “must build” provision (that requires developers to build at least a minimum proportion of the affordable housing units) or other unique provisions;
- Incentives, if any, to increase housing production; and/or
- Alternative means of compliance, likely to include an in-lieu fee, along with associated considerations (e.g., projects for which City would benefit from the payment of fees instead of production), and procedures for evaluating and approving alternative affordable housing proposals (e.g., land dedication).

EPS will recommend implementation factors such as periodic calculation and escalation of in-lieu fees and development impact fees, assessment of fees for required monitoring/administration of inclusionary units, rules for determination of income eligibility, and related guidelines. Recommendations will reflect best practices among survey jurisdictions, EPS Team professional experience, as well as the policy objectives of the City.

**Task 7 Meetings:** EPS will participate in a Work Session with City staff to review **Task 7** recommendations. The goal of the Task 7 meeting is to identify an agreed upon Policy Recommendation for **Task 8** Outreach.

**Task 7 Deliverable:** Draft and Final PowerPoint Recommendations presentation. EPS will accept and address one round of consolidated comments on a draft before finalizing the deliverable.

## Task 8 Outreach

EPS will participate in meetings and hearings that are needed to vet and refine the Inclusionary Housing Policy and Development Impact Fee program recommendations. EPS anticipates preparing for and attending approximately seven major meetings, including a “developer roundtable” meeting and six additional meetings, with the Housing Committee (2 meetings), Planning Commission (2 meetings), and City Council (2 meetings). Based on feedback from stakeholders and City bodies, EPS will collaborate with Staff to refine the preferred Inclusionary Housing Policy and Development Impact Fee recommendation from **Task 9**.

**Task 8 Meetings:** EPS attendance and presentations at seven (7) meetings and hearings.

**Task 8 Deliverable:** EPS assumes that the **Task 7** PowerPoint presentation deliverable will be used for all presentation audiences.

## Task 9 Final Recommendations

The EPS Team assumes that City decision-makers will accept the Study’s major policy recommendations and that suggested revisions will focus on refining finer points of the policies and programs. However, EPS recognizes that **Task 8** outreach, evolving legislation and legal perspectives, ongoing City initiatives (e.g., Development Impact Fee Update), and other factors may raise issues that should be addressed before the inclusionary housing policy is finalized. In **Task 9**, EPS will collaborate with staff to refine policy recommendation and may conduct additional research and analysis needed to address questions, concerns, or comments on the working draft policy. EPS has allocated 40 hours of staff time to refining recommendations. The

proposed budget includes an additional 20 hours of EPS staff time for supplementary research and analysis.

**Task 9 Deliverable:** Draft and Final PowerPoint Final Recommendations presentation. EPS will accept and address one round of consolidated comments on a draft before finalizing the deliverable.

## Task 10 Draft Code Language

EPS will draft municipal code language that fully describes the consensus Inclusionary Housing Policy, including refinements and adjustments identified during **Task 9**. The code will be authored to be consistent with existing City of Emeryville law, but formal consistency review and finalization of the Inclusionary Housing Policy will be the responsibility of the City of Emeryville. EPS will accept one round of consolidated comments on the draft code language, address comments, and deliver revised draft code to the City.

**Task 10 Deliverable:** Draft municipal code language. EPS will accept and address one round of consolidated comments on a draft before revising the code text.

## Optional Task

### *Define Transportation Impact Fee to Mitigate CEQA VMT Impacts*

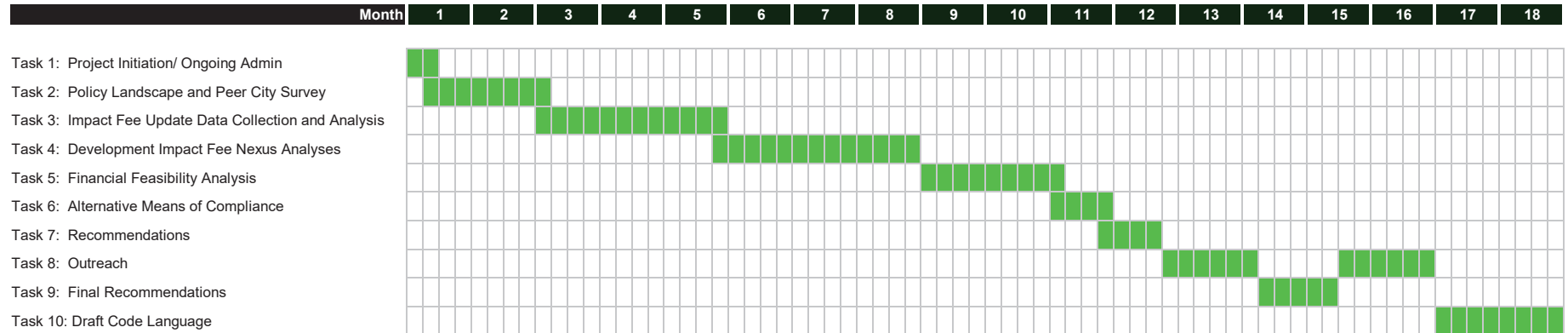
To ensure that payment of the transportation fee by developers would provide at least partial mitigation for significant impacts of future development projects on VMT, this task will document that the combined effect of all improvement projects included in the fee program would result in a net reduction of citywide VMT. Fehr & Peers will update the Alameda CTC Model to include the transportation improvement projects and estimate the net reduction in VMT generated in Emeryville. Since the Alameda CTC Model is not sensitive to some pedestrian and bicycle improvements, Fehr & Peers will supplement the Model results with other sources, such as the Alameda CTC VMT Reduction Calculator Tool which quantifies the effects of various strategies in reducing VMT based on project location, and research compiled in the draft *Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, Designed for Local Governments, Communities, and Project Developers* (California Air Pollution Control Officers Association, August 2021). The analysis will quantify the effectiveness of the transportation fee program projects in reducing VMT in Emeryville and determine if future developments can rely on the TIF to partially mitigate their significant impacts on VMT.



## Inclusionary Housing Policy and Development Impact Fee Update Study

## Proposal

EPS Proposal #251047





# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **ECONOMIC AND PLANNING SYSTEMS, INC (EPS)**.

#### 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)  
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☒ **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*