



City of Emeryville

CALIFORNIA

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (“Contract”) is effective as of _____ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **FRESH START PAINTING CO.** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

WHEREAS, by Resolution No. _____, the City Council of the City of Emeryville has authorized the Director of Public Works to solicit public bids for painting the exterior of the Old City Hall and Civic Center Building; and

WHEREAS, the City has conducted a public bidding procedure in compliance with all applicable laws; and

WHEREAS, Contractor submitted the lowest responsible bid; and

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

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

1. CONTRACT DOCUMENTS

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

- Construction Contract
 - Exhibit A –
 - 1) **Exhibit A(1)** – Addenda to Project Specifications (if applicable)
 - 2) **Exhibit A(2)** – Project Specifications
 - 3) **Exhibit A(3)** – Addenda to Project Plans (if applicable)
 - 4) **Exhibit A(4)** – Project Plans
 - 5) Contractor’s Bid and Proposal (as accepted by City)
 - **Exhibit B** – Contract Insurance Requirements
 - **Exhibit C** – City Supplemental Terms and Conditions
 - **Exhibit D** – Required Bond Documents

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

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

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

2. SCOPE OF WORK

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

3. PRICE

The total amount to be paid under this Contract for all of the work set forth in Section 2 above is exceed **ONE HUNDRED SEVENTY TWO THOUSAND THREE HUNDRED EIGHT DOLLARS AND NO CENTS (\$172,308.00)** ("Total Contract Price"). This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

4. TIME FOR COMPLETION

After the Contract has been executed by City, Contractor shall begin work within **seven (7) calendar days** after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **sixty (60) working days** from the effective date of the Notice to Proceed. Liquidated Damages in the Amount of **\$500.00 per calendar day** will be assessed for failure to complete the contract work within the number of workdays specified.

5. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of

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

6. INSURANCE

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

7. NO WAIVER

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

8. NOTICES

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

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CITY	CONTRACTOR
Mohamed Alaoui, Public Works Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4300 E-Mail : mohamed.alaoui@emeryville.org	Dorris Koutantos 8 Seville Court Milbrae, CA 94030 Phone No: 650-222-5369 E-Mail : freshstartpco@gmail.com
<i>with a copy to:</i> Ali Ahmadzadeh 1333 Park Ave Emeryville, California 94608 Phone No: 510-596-3742 E-Mail : ali.ahmadzadeh@emeryville.org	

9. ENTIRE CONTRACT

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

10. AUTHORITY TO CONTRACT

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

SIGNATURES ON FOLLOWING PAGE

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11. SIGNATURE PAGE TO CONSTRUCTION CONTRACT

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

Approved As To Form:

DocuSigned by:
John Kennedy
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City Attorney

Dated: **CITY OF EMERYVILLE**

Paul Buddenhagen, City Manager

Dated: **FRESH START PAINTING CO.**

07/02/2024

DocuSigned by:
Dorris Koutantos
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Dorris Koutantos, President (Signature)