



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this 5th day of September, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **CDM Smith** ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT

WHEREAS, the City desires to implement a parking management program including paid parking and residential permit parking. There is a need to update and expand the previous parking management plan prepared by CDM Smith in 2010 to support the rollout of this new parking 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 Agreement; and

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

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

WHEREAS, the public interest will be served by this Agreement; 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 described in "Scope of Services Emeryville Parking Management Update," attached as Exhibit A.

1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on SEPTEMBER 5, 2017 and terminate on JULY 1, 2018.

| FOR CITY USE ONLY | | | |
|-------------------|--|---------|--|
| Contract No. | | CIP No. | |
| Resolution No. | | EPW No. | |

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

2.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

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

3.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED**

SEVENTY-THREE THOUSAND TWO HUNDRED FIFTY-THREE DOLLARS AND NO CENTS (\$173,253), 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 CONSULTANT

4.1 Assignment of Agreement

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

4.2 Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant 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 Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant 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 consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. 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 Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

4.3 Independent Contractor

The Consultant 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 Consultant 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 consultants, 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 Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

4.4 Insurance

4.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

4.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

weff (Consultant's Initials)

4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.

4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

4.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

4.5 Records, Reports and Audits

4.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. 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 Agreement. 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 Agreement shall be clearly identified and readily accessible.

4.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement 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 Agreement. The Consultant 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 Agreement.

4.6 Conflicts of Interest

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

4.7 Confidentiality

The Consultant 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 Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant 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.

4.9 Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant 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 Agreement. All work performed by Consultant under this Agreement 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 work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant 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 Consultant's obligations under this Agreement and shall be grounds for termination.

4.11 Authority to Contract

The Consultant 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 Consultant to the terms of this Agreement, 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 Consultant ("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 Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant 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 Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant 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) Consultant 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 Consultant 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. Consultant 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 Consultant 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 Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, 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.

4.14 Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

4.14.1 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

4.14.2 LABOR NON-DISCRIMINATION

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

4.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at www.dir.ca.gov. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.

- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

4.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant 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 Agreement, Consultant 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."

4.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

5. TERMINATION

- A. The City shall have the right to terminate this Agreement 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 Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant 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 Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant 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 Consultant or successor or on any obligation under the terms of this Agreement.

7. ENTIRE AGREEMENT

This Agreement 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 Agreement not contained in this Agreement shall be valid or binding. This Agreement 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 provision of this Agreement regarding assignment, this Agreement 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 Agreement, 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 Agreement 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 Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. 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 Agreement shall remain in full force and effect to the extent possible.

11. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, 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 shall be exchanged between **Amber Evans** for the City and **Bill Hurrell** for the Consultant.

12.2 Official Notices

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

CITY

Amber Evans

Community Development Coordinator
Economic Development and Housing Div
Community Development Department
City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Phone No.: (510) 596-4382
Fax No.: (510) 596-4389
E-Mail: aevans@emeryville.org

CONSULTANT

Bill Hurrell

Regional Vice President
CDM Smith
220 Montgomery Street, Suite 1418
San Francisco, CA 94104
Phone No.: (415) 653-3317
E-Mail: hurrellwe@cdmsmith.com

13. WAIVER OF AGREEMENT

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

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:



Michael A. Guina, City Attorney

CITY OF EMERYVILLE

Dated:

_____, 2017

Carolyn Lehr, City Manager

CONSULTANT

Dated:

August 15, 2017

BY: 

ITS: William Hurrell, Vice President

Scope of Services

Emeryville Parking Management Plan Update

The City of Emeryville has been awarded funding from the Alameda CTC to implement a parking management program including paid parking and residential permit parking. There is a need to update and expand upon the parking management plan prepared by CDM Smith in 2010 to support the rollout of this new parking program.

The updated parking management plan will need address four key elements:

1. **Pricing** – The pricing plan developed in 2010 needs to be revisited in terms of the geographic areas and off-street facilities subject to pricing, the pricing strategy and policy, and the plan for pricing implementation. For example, the updated study will include the Emeryville Marina area, which was not included in the 2010 study
2. **Technology** – The technologies that will be used for parking pricing and enforcement need to be identified and an implementation plan developed.
3. **Permit Parking** – The residential parking permit (RPP) parking guidelines that the City adopted in 2007 and the RPP plan that was presented in the 2010 study both need to be reviewed and refined to address current conditions.
4. **Management** – The internal structure for the management of the parking program in terms of program administration, public communications/interface, maintenance and enforcement needs to be defined and a financial plan needs to be prepared.

As the both the adjacent cities of Berkeley and Oakland have progressive parking management programs that impact areas next to Emeryville it is important to coordinate with them. Also public and stakeholder outreach will be a critical part of the effort.

Figure 1 - Context Map and Proposed Study Area



Scope of Work

The parking plan update would consist of the following tasks:

1. Data Collection – The data collection effort will largely replicate that conducted in 2010 which will allow for a consistent comparison of results to identify changes that have occurred since that time. The same geographic areas covered in 2010 will be included: North Hollis Street, the Triangle, South of Powell Street and the North Bayfront areas (see Figure 1). The Marina area include all of Powell Street west of I-80 and the off-street parking areas west of the Watergate residential complex will be added to the effort. The data collection efforts will include:
 - a. Parking Inventory – The inventory from 2010 would be updated and expanded as to include the Marina and curb changes plus garage construction at Heritage

square and Emery Station West. The City will provide GIS mapping showing the current painted designations of curb space throughout the City.

b. Occupancy Survey

i. North Hollis Area

1. Area 1 – Hourly weekday occupancy from 7:00 AM to 7:00 PM, with a 4:00 AM sample also.
2. Area 2 – Hourly weekday occupancy from 7:00 AM to 7:00 PM

ii. Triangle, South of Powell Street and the North Bayfront – Hourly weekday occupancy from 9:00 AM – 11:00 AM

iii. Marina – Weekday occupancy at 10:00 AM, 3:00 PM and 7:00 PM.

2. License Plate Survey - All Areas - Weekdays – selected sample weekdays at 4:00 AM, 10:00 AM, and 3:00 PM. Note that a 7:00 PM sample will be added for the Marina Area to capture restaurant related activity and the 4:00 A.M. sample will be eliminated. The 4:00 AM is intended to detect which vehicles belong to residents. While there are some people living aboard the boats, it is not the kind of resident versus employee/visitor conflict that occurs in the rest of the city.
3. Intercept and Parking Manager Surveys – The intercept and parking manager survey efforts conducted in the 2010 study will be repeated to update the information and allow comparisons to the 2010 results. However, to increase the response rate of the intercept survey the surveyors will hand out postcards to individuals with the information on how to complete the survey on-line. We have found this type of survey provides a much better response rate than trying to interview people on the street or in parking lots and structure. The survey will be in the North Hollis Area from 8:00 AM to 5:00 PM on a weekday.

Figure 2 - Study Areas from 2010 Study



4. Coordination with Adjacent Cities – CDM Smith will initiate and maintain a dialog with parking management staff in Berkeley and Oakland to understand the current status of their programs as they relate to Emeryville and to learn about the decisions they have made relative to technology, pricing and Residential Parking Permit (RPP) zones. This will consist of initial meetings early in the study process and then a set of follow up meetings as the recommendations for Emeryville are being developed.
5. Analysis and Summary – An Existing Conditions technical report would be prepared summarizing the results of the data collection, comparing the results with 2010 and factoring in the expanded study area. A draft of this report will be prepared for review by the City. Two rounds of comments and revisions are expected to refine and finalize the report.
6. Outreach –CDM Smith and PlaceWorks will participate in the outreach effort. PlaceWorks would be responsible for leading public outreach and engagement in the Parking Management Plan. We propose a multi-faceted outreach approach:
 - a. Project Webpage. PlaceWorks will design a webpage for the Parking Management Plan with general information about the project, a description of the process, meeting dates and materials, and project updates as major milestones are achieved. The website will also offer a quick and easy way to sign up for a mailing list and submit comments or questions.
 - b. Online Engagement. In order to reach a broad base of participants and encourage busy stakeholders to participate in the Parking Management Plan, we will create a customized online comment and discussion forum to supplement traditional community workshops and public meetings. We can use this forum to post discussion questions, prioritization surveys, and/or map-based exercises. The online engagement tool will provide City staff and decision-makers with a broader range of perspectives and community input throughout the planning process. PlaceWorks' online civic engagement tool enables us to monitor discussions to ensure that feedback is civil and on-topic.
 - c. Community Meetings. We propose two rounds of public and stakeholder outreach. Round 1 would occur after the data collection and analysis is complete, and Round 2 would occur when the options for pricing, the RPP program and the technologies are evaluated. PlaceWorks will conduct parallel outreach to residents and to businesses/employees. Each round would include one public evening or weekend workshop for residents, and a separate public meeting held during a weekday for businesses and employees, organized through the TMA and the business association. PlaceWorks will prepare a presentation, agenda, sign-in sheets, and brief summaries for each meeting.
 - d. Outreach Materials. PlaceWorks will provide the following outreach materials. All will reference the project webpage and online engagement forum.
 - *A paper flier or poster and an e-blast or digital postcard advertising each of the four community meetings.*

- *A one-page fact sheet explaining the need for and benefits of new parking management strategies, the Parking Management Plan process, and opportunities to get involved.*

PlaceWorks assumes that City staff will be responsible for physical and electronic distribution of fliers and e-blasts.

- e. Project Management: PlaceWorks will participate in regular team calls to ensure that outreach efforts are seamlessly integrated and that the materials we develop accurately reflect data collection, analysis outcomes, and all other content developed for the Parking Management Plan.
 - f. Optional Task: Pop-Up Events. PlaceWorks staff would attend a community event such as Movies in the Park, the Summer Concert Series, shoreline cleanups, or the Bay Street Farmers' Market to share information and gather feedback. For these events, we would develop a simple, fun, interactive survey or other exercise, as well as a postcard or one-page handout explaining the Parking Management Plan.
 - g. Optional Task: Social Media Support. PlaceWorks staff would be responsible for researching, vetting, and providing relevant content to City staff for posting on City-run Facebook and Twitter feeds approximately every two weeks for the duration of the project.
 - h. Optional Task: Press Releases. PlaceWorks staff would draft two press releases at key milestones for distribution to local news media.
 - i. Optional Task: Branding and Graphic Design. PlaceWorks would develop a project logo as well as a consistent color palette, fonts, and brand standards for the Parking Management Plan. (Note that this does not cover branding for the ultimate implementation of a new Citywide parking management strategy.)
7. Amtrak Lot/Parking Garage – (optional task) The City needs guidance as to the price strategy that should be implemented in the Amtrak parking lot and ultimately in the shared public/private parking structure that will be built on this site. CDM Smith will prepare a technical memo addressing this issue and providing recommendations.
 8. Pricing Strategies – Based on the results of tasks 1 to 4 alternative pricing strategies would be developed and tested. The strategies used by Berkeley and Oakland and other peer Bay Area cities will also be considered (San Mateo, Alameda, Redwood City...). A preferred strategy would be selected in coordination with the City. Strategies considered could include:
 - i. Traditional pay by hour schemes with time limits.
 - ii. Progressive pricing with hourly rates increasing in relation to the duration of stay without limits.
 - iii. Demand based pricing designed to maintain 85% occupancy in high demand locations and improve utilization of spaces in low occupancy area.
 - iv. Variable congestion based pricing with higher prices during times of peak demand.

- v. Discounted pricing for residents
 - vi. Combinations of the above.
9. Resident Permit Parking – The recommendations from the 2010 plan will be reviewed and updated, taking into consideration the results of the data collection and the information received from Berkeley and Oakland, as well other peer cities. The concept of no permits for the tenants of new residential development will be explored as well as special permits for business employees.
 10. Technology Options – Based upon the pricing strategy that is selected, the options for revenue collection will be reviewed in terms of smart meters, pay stations, pay by phone, pay by app, pay by smart card or other appropriate technologies. Options for enforcement technology such as mobile license plate readers will also be explored. CDM Smith will provide a matrix grouping the technology options by type and comparing them in terms of costs, effectiveness, convenience (customer acceptance), ease of enforcement, reliability and ability to upgrade or replace as needed. The experience of other nearby cities with the various technologies will also be factored in.
 11. Management Plan and Financial Analysis – The 2010 plan included a staffing plan for management and enforcement of the parking program as well as a financial analysis. This updated plan will need to include a more robust planning and financial analysis effort. First the plan will consider the options for parking program management such as:
 - a. Continue current practices with expanded staffing
 - b. Create a parking management division within the City to include administration, maintenance and enforcement
 - c. Contract out the maintenance and enforcement activities to a third-party contractor
 - d. Turn over the parking program management function to the Emeryville TMA

The parking management staffing plan developed in 2010 would be reviewed and updated to reflect current costs and the full aspect of the updated parking management program. This would include a staffing plan and a 10-year financial analysis. The financial analysis will include:

- a. Personnel costs – CDM Smith will work with the City to define the personnel needed to run the program under the management scenarios outlined above and will obtain current salary and overhead costs for each classification. Other cities will be interviewed to learn about the costs of third-party contract services.
- b. Equipment costs – CDM Smith will obtain current costs for the technologies which are under consideration for the program. This information will include capital costs of purchase and installation, as well as annual operating and maintenance costs. The expected life span of the equipment will be determined so that replacement costs can be factored into the program. This information will be gathered from interviews with vendors as well as with the cities that have experience with the selected technologies.

- c. Third-Party costs – The City may elect to use third-party contractors for such services as parking citation processing, equipment maintenance and even enforcement. CDM Smith will obtain information about these services from the contractors and from peer cities that have experience with third-party contractors.
- d. Parking Revenues – Revenues from permits, parking meters, pay stations and other selected payment options will be estimated using the updated parking utilization and turnover data collected in Task 1 based on the preferred parking fee strategies selected from Task 6. High and low estimates of revenue will be prepared to reflect the uncertainties regarding the future demand for paid parking.
- e. Financial Performa – A ten-year itemized forecast of the parking program revenues and costs will be prepared for three scenarios which will be defined and developed in full coordination with the City. The scenarios would represent different approaches to program management, parking fee structure, and revenue collection and enforcement technologies.
- f. Curb management – The financial analysis will take into consideration curb uses and the resulting net loss in revenue that may occur as regular parking spaces are eliminated or converted to other uses over time. This would include but not limited to loading and unloading zones, handicapped designated curbs, bike share, car sharing spaces, loading zones for taxis and TNC vehicles and transit stops/layover zones.

CDM Smith will prepare a management plan and financial analysis report which will document all the above work and provide the City with the information needed to make decisions regarding the ongoing development and implementation of the plan. A draft will be provided and two rounds of revision are expected to finalize the report.

- 12. Draft and Final Report – A draft summary report would be prepared presenting the results of the plan. Two rounds of review and revision are anticipated. A summary presentation would also be prepared and CDM Smith would be available to attend a planning commission or transportation commission meeting and a city council meeting.
- 13. Implementation Services – (Optional task) CDM Smith would provide support for the implementation of the plan including development of RFP's for technology vendors, assistance with grant applications and development of job descriptions for parking management staff positions. Because the scope of this task will not be clear until decisions are made regarding the types of technology and vendor services that will be procured, a detailed scope and budget is not provided for this task.

Staffing

Bill Hurrell of CDM Smith will be the Project Manager. Bill was the project manager for the 2010 Parking Management plan. He has over 40 years of experience in all aspects of parking. Recent projects include the GoBerkeley demand based parking pricing project, parking management plans for Albany, San Leandro and Hayward, and overall direction of MTC's

Regional Value Based Parking Pricing Project. He was named Parking Professional of the Year by the California Public Parking Association.

Ted Huynh of CDM Smith will serve as Principal Engineer. He also worked on the Albany and San Leandro projects and is now managing parking studies for both San Bruno and San Mateo. He developed a parking demand model that has been used by numerous cities in the Bay Area including Mountain View, Redwood City, Los Altos, and San Mateo. He is skilled in financial costs and revenue analysis.

Anne Spevack of CDM Smith will be the Principal Planner and Analyst – Anne is highly skilled in the use of GIS and the processing of parking data to produce parking analytics. She is a transportation planner and engineer with experience in parking policy, performance metrics, and transportation and housing policy. She played a key role on the GoBerkeley project, assisting with the before and after analysis of the parking technology demonstrations that are the key feature of that innovative project. She is also well versed in the status of parking technology options for both pricing and enforcement.

Joanna Jansen of PlaceWorks will lead the outreach effort. CDM Smith and PlaceWorks have collaborated on a number of municipal parking management efforts. Joanna is currently working with us on the San Bruno project and was also involved with the Albany and San Leandro projects.

Schedule and Budget

Project Timeline:

- Initiate Work – September 18, 2017
- Complete Data Collection/Analysis – October 27, 2017*
- First Round of Public Outreach – November 2017
- Complete Review of Technology and Management Options – December 15, 2017*
- Submit Draft Report – January 26, 2018*
- Second Round of Public Outreach – January 2018
- Planning Commission and Council Review – February 2018
- Develop RFPs and Installation Plans – March – April 2018**
- Issue RFPs and select vendors – May – June 2018**
- Initiate installation and testing – July 2018**

*Two weeks of city review time is anticipated

** Not included as part of this scope of work

Table 1 below shows the estimated project budget:

| Table 1 Cost Estimate Emeryville Parking Management Plan Update | | | | | |
|--|-------------------|-------------------|------------------|-------------------|--|
| Task | CDM Smith | PlaceWorks | NDS Data | Cost | Notes |
| 1. Data Collection | \$ 5,000 | \$ - | \$ 26,483 | \$ 31,483 | See NDS Detail |
| 2. Coordination with Cities | \$ 5,500 | \$ - | \$ - | \$ 5,500 | |
| 3. Analysis and Summary | \$ 18,000 | \$ - | \$ - | \$ 18,000 | |
| 4. Outreach | \$ 6,500 | \$ 47,770 | \$ - | \$ 54,270 | See PlaceWorks Detail |
| 5. Amtrak Lot Analysis | \$ 3,500 | \$ - | \$ - | \$ 3,500 | Optional Task |
| 6. Pricing Strategies | \$ 7,000 | \$ - | \$ - | \$ 7,000 | |
| 7. Resident Permit Parking | \$ 7,500 | \$ - | \$ - | \$ 7,500 | |
| 8. Technology Options | \$ 11,000 | \$ - | \$ - | \$ 11,000 | |
| 9. Management/Financial Analysis | \$ 22,500 | \$ - | \$ - | \$ 22,500 | |
| 10. Draft and Final Report | \$ 16,000 | \$ - | \$ - | \$ 16,000 | |
| 11. Implementation Services | \$ - | \$ - | \$ - | \$ - | Scope & Budget to be provided separately |
| Total | \$ 102,500 | \$ 47,770 | \$ 26,483 | \$ 173,253 | |
| Total Including Optional Task 5 | \$ 102,500 | \$ 47,770 | \$ 26,483 | \$ 176,753 | |

Table 2 provides the detail for the outreach task as well as outlining a number of optional items which could enhance the overall effort.

| Table 2 Detailed Budget for PlaceWorks | |
|---|---|
| Outreach Task (Base Scope) | Cost Estimate |
| Project Webpage | \$5,570 |
| Online Engagement | \$6,500 (assumes use of up to 3 different question types) |
| Community Meetings (4 meetings) | \$22,400 (\$5,600 each) |
| Outreach Materials | \$5,460 |
| Project Management | \$7,590 |
| Expenses | \$250 |
| TOTAL (Base scope) | \$47,770 |
| OPTIONAL TASKS | |
| Pop-Up Events | \$5,000 per event |
| Social Media Support | \$3,480 |
| Press Releases | \$3,370 for two |
| Branding and Graphic Design | \$3,525 |

The detail for the data collection is shown on the following page. The cost for the weekday surveys is \$26,483. If a weekend survey is desired it would add \$21,732 for a total of \$48,215.



ESTIMATE

| | | |
|----------|--|------------|
| Date | | Estimate # |
| 8/1/2017 | | |

NDS is a parent company All Traffic Data, FDS & SCC

4740 Northgate Blvd, STE 110
Sacramento, CA 95834

Name / Address

CDM Smith
220 Montgomery Street
Suite 1418
San Francisco, CA 94104

| | |
|-------------|--------------|
| P.O. Number | Contact |
| Emeryville | Bill Hurrell |

| Item | Description | Weekday | Weekend (optional) | Total |
|---------------|---|-------------|--------------------|-------------|
| PARK | INVENTORY & SETUP | \$4,800.00 | | \$4,800.00 |
| PARK | HOURLY LICENSE PLATES 7 AM - 7 PM (12 sweeps total) with in North Hollis area | \$8,640.00 | \$8,640.00 | \$17,280.00 |
| PARK | HOURLY LICENSE PLATES 4 AM & 7 AM - 7 PM (13 sweeps total) with ALPR in North Hollis area | \$2,340.00 | \$2,340.00 | \$4,680.00 |
| PARK | LICENSE PLATES COLLECTED IN 1 HOUR SWEEPS AT 10 AM & 3 PM with in South of Powell, Bayfront & Triangle areas | \$7,920.00 | \$7,920.00 | \$15,840.00 |
| PARK | LICENSE PLATES COLLECTED IN 1 HOUR SWEEPS AT 10 AM, 3 PM & 7 PM with in Marina area | \$2,160.00 | \$2,160.00 | \$4,320.00 |
| PARK | 4 AM LICENSE PLATE SWEEP with 27 techs | \$1,836.00 | \$1,836.00 | \$3,672.00 |
| PARK | INPUT AND MATCHING OF LICENSE PLATE DATA | \$1,250.00 | \$1,250.00 | \$2,500.00 |
| MISC | DISTRIBUTION OF ONLINE SURVEY POSTCARDS 9 AM - 5 PM with 1 tech | \$480.00 | | \$480.00 |
| DIS | 10% VOLUME DISCOUNT | -\$2,942.60 | -\$2,414.60 | -\$5,357.20 |
| Totals | | \$26,483.40 | \$21,731.40 | \$48,214.80 |

Signature _____

| | | |
|------------------------|-----------------------|--|
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|------------------------|-----------------------|--|