

MAINTENANCE CONTRACT

This Contract is made and entered into this ____ day of _____, 2018, between **CITY OF EMERYVILLE**, a municipal corporation ("City") and **Integrity Construction Maintenance, Inc.** ("Contractor");

W I T N E S S E T H:

WHEREAS, Integrity Construction Maintenance Inc., of Sebastopol, California submitted a proposal in 2013 for janitorial services of City owned buildings; and

WHEREAS, said contract allowed for annual options to renew said contract; and

WHEREAS, the current Contract expires on June 30, 2018, and the parties wish to renew the Contract for Fiscal Year 2018/19; and

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

NOW, THEREFORE, the parties mutually agree as follows:

A. AWARD OF CONTRACT

1. Contract Documents

The Contract Documents shall include this Contract and any Plans and Specifications, Notice to Contractors, Contractor's Proposal, Addenda, and Change Orders. In the event of any conflict between the printed provisions of this Contract and those of Contractor's offer of acceptance, the provision of this Contract shall prevail

2. Scope of Work

In conformance with the Contract Documents, Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship and disposal required in order to provide scheduled maintenance services as directed by the City at the facilities described in Exhibit B.

Any quantities for work are estimates. The City does not guarantee any level of work under this Contract. The City, in its discretion, reserves the right to hire or contract with others to do the work set forth in the Contract.

FOR CITY USE ONLY			
Contract #:		CIP#:	
Reso. #:		EPW#:	

3. Price

The amount paid under this Contract for all of the work set forth in Section 2 shall be paid on a time and materials basis at the rate set forth in Exhibit A and shall not exceed **\$219,387 (TWO HUNDRED AND NINETEEN THOUSAND-THREE HUNDRED AND EIGHTY-SEVEN DOLLARS)** ("Total Estimated Contract Price"). The Total Estimated Contract 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. The Total Estimated Contract Price is the estimated total amount includes the estimated annual cost of regularly scheduled and/or routine janitorial services as set forth in Exhibit A.

i. **Supply / Equipment Allowance**

An allowance is included in the Total Contract Amount for furnishing Supplies and Equipment for each facility as described in Exhibit "A". The monthly compensation for furnishing said Supplies and Equipment shall be at actual cost plus 15% markup.

ii. **Spring Cleaning Allowance**

An allowance is included in the Total Contract Amount for a "Spring Cleaning" at the various facilities as described in Exhibit "A". Compensation for said Spring Cleaning service at the various facilities shall be on a time and materials basis as approved by the City in advance of performing said service.

iii. **Additional Cleanings Allowance**

An allowance is included in the Total Contract Amount for additional cleanings at the Senior Center and Child Development Center when requested by the City after special events at said facilities. Compensation for said additional cleanings shall be at the hourly rate stated in Exhibit "A".

The Total Contract Amount 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 Agreement.

4. Payment

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.

5. Time for Performance

After the Contract has been executed by City, Contractor shall begin work and shall diligently prosecute the work until June 30, 2019. If Contractor fails to complete the work within any of the time limits set forth above, the parties agree that City will sustain damage and that it is difficult and impracticable to ascertain the actual damage amount. Therefore, it is agreed that Contractor shall pay City \$100.00 per calendar day of delay in finishing work as liquidated damages and not as a penalty. City may deduct such liquidated damages from any amounts due Contractor. The liquidated damages described herein are in addition to any other remedies at law or equity available to City.

6. Option to Extend the Contract

This Contract shall commence on the Effective Date and shall terminate on **June 30, 2019.**

The City's Fiscal Year commences on July 1 and ends on June 30 of the following year. At the sole option of the City, the City may extend the term of this Contract with the Contractor for an additional fiscal year, 2019/2020 under the same terms and conditions of this Contract ("renewal option"). This renewal option must be exercised by City by

providing written notice of the City's intent to exercise said option to Contractor at least 30 days prior to the expiration of the then-current Contract term. If the City does not provide notice of its intent to exercise a renewal option, the Contract shall expire at the end of the then-current fiscal year. The Contractor shall be entitled to increase its rates at a percentage no greater than the percent increase in the March to March San Francisco/Oakland Metropolitan Area Consumer Price Index as released by the United States Department of Labor on a yearly basis with a maximum inflation increase of 5% per year.

The City's decision to exercise its renewal option for any given fiscal year does not guarantee renewal for any subsequent fiscal year.

B. PROSECUTION OF WORK

1. Change Orders

City may, without notice to the sureties, and without invalidating the Contract, at any time: a) make alterations, deviations, additions to or deletions from the Contract Documents; b) increase or decrease the quantity of any item or portion of the work; c) delete any item or portion of the work; or d) require extra work, as determined by City to be necessary or advisable. All such work shall be performed under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered.

Any such changes will be set forth in a written Change Order issued by City. The Change Order will specify:

- a. the work to be done in connection with the change to be made;
- b. the amount of the adjustment of the Contract price, if any, and the basis for compensation for the work ordered; and
- c. the extent of the adjustment in the Contract time, if any.

A Change Order shall not become effective until it has been signed by the Director of Public Works. Upon receipt of an approved Change Order, Contractor shall promptly proceed with the ordered work, unless otherwise provided in the approved Change Order.

No changes or deviations from the Contract Documents shall be made without the authority of an approved Change Order, except that in cases of emergency the Director of Public Works may direct a change in writing. A Change Order increasing the total compensation under the Contract requires a written amendment to the Contract.

Whenever it appears to Contractor that a change is necessary, Contractor shall immediately notify the Director of Public Works of the change it believes necessary and the reasons for such change; however, work in the area affected shall not be discontinued unless ordered by the Director of Public Works.

2. Differing Site Conditions

Contractor shall promptly, and before such conditions are disturbed, notify the Director of Public Works in writing of:

- a. material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or class III disposal site in accordance with provisions of existing law;
- b. subsurface or latent physical conditions differing materially from those indicated in this Contract; or
- c. unknown physical conditions, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Director of Public Works shall promptly investigate the conditions. If the Director of Public Works finds that such conditions do materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in accordance with the change order procedures set forth herein.

In the event of any dispute between City and Contractor over the significance or existence of the changed conditions, Contractor shall not be excused from the scheduled completion date set forth herein, but shall retain such rights it may have as provided in these Contract Documents.

No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required by this section, except that City may extend the prescribed time. No claim by Contractor for an equitable adjustment under this provision shall be allowed if asserted after final payment under this Contract.

3. Public Convenience

Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public and it shall have under construction no greater length or amount of work than it can prosecute properly with due regard to the rights of the public. Maintenance operations shall be conducted in such a manner as to cause as little inconvenience as possible to owners of abutting property. Convenient

access to driveways, houses and buildings along the line of work shall be maintained, and temporary approaches to roads or highways shall be provided and kept in good condition.

4. Traffic Control Measures.

Contractor shall provide appropriate vehicular, pedestrian and bicycle traffic control measures.

a. Where facilities exist, a minimum sidewalk and bikepath width of four (4) feet shall be maintained at all times for safe passage through the work area. At no time shall pedestrians be diverted onto a portion of the street used for vehicular traffic. At locations where adjacent alternate walkways cannot be provided, appropriate signs and barricades shall be installed at the limits of the construction site and in advance of the closure of the nearest crosswalk or intersection to divert pedestrians across the street. Access shall be maintained for persons with disabilities.

b. All work shall be planned and carried out so that there is least possible inconvenience to vehicular traffic, including deliveries to adjacent properties. Warning signs, lights and safety devices and other measures shall conform to the requirements of the Manual of Traffic Controls issued by Caltrans. Traffic control for day or nighttime lane closures (if nighttime work is permitted) shall be in conformance with the Caltrans Standard Plans for Traffic Control Systems. Contractor is authorized to place properly attired flagger(s) to stop and warn traffic. Traffic shall not be unreasonably delayed. Flagging procedures shall be in conformance with the Instructions to Flaggers pamphlet and/or Manual of Traffic Controls for Construction and Maintenance Work Zones issues by Caltrans.

5. Work in the Public Right of Way

For work in City's right of way, Contractor shall obtain an Encroachment Permit from City and comply with all provisions of that Permit, unless waived by the Director of Public Works. For work in other public rights of way, Contractor shall comply with the rules and regulations of the applicable state, county or local agency that owns the right of way. All trucks coming to the site or leaving the site with materials or loose debris shall be loaded in a manner which will prevent dropping of material or debris on public streets. Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately at Contractor's expense.

All costs of complying with these requirements shall be included in the Contract price. The Director of Public Works shall have the authority, but not the duty, to stop Contractor from beginning new work until the provisions of this section have been met.

6. Air Pollution Control

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract. Material to be disposed of shall not be burned, either inside or outside the work site.

7. Water Pollution Control

Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

8. Storm Water Pollution Prevention Standards

Contractor shall comply with City's Storm Water Pollution Prevention standards at all times during operation of this contract by incorporating current Best Management Practices (BMP) for use during the work.

9. Sound Control Requirements

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the Contract. Unless otherwise provided in writing, work shall be limited to Monday through Friday from 7:00 a.m. to 6:00 p.m. Any pile driving shall be limited to Monday through Friday from 8:00 a.m. to 5:00 p.m. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer.

10. Use of Pesticides

Contractor shall comply with all rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of this Contract. Any substance or mixture of substances intended for preventing, repelling, mitigating or destroying weeds, insects, diseases, rodents or nematode and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered as pesticide.

11. Weight Limitations

Unless expressly permitted by the Director of Public Works, Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed

the maximum weight limits set forth in Division 15 of the California Vehicle Code over completed or existing base, surfacing, pavement or structures.

12. Sanitary Provisions

Contractor shall conform to the rules and regulations pertaining to sanitary provisions established by the applicable city, county or state agency. Toilets for use of employees on the work shall be furnished where needed and shall be maintained by Contractor. Their use shall be strictly enforced.

13. Safety Requirements

Contractor shall comply with all safety requirements prescribed by applicable federal, state and local laws and regulations to ensure the safety and health of those working and the local community. Contractor shall assume all responsibility for public safety during the prosecution of the work and all such costs shall be included in the Contract price. Whenever Contractor's operations create a condition hazardous to traffic or to the public, it shall furnish, erect and maintain, at its expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

14. Inspection

All authorized representatives of City shall have access to the work. Work and materials not meeting the requirements of City shall be corrected, and unsuitable work or material may be rejected. Failure on City's part to reject nonconforming work shall not be construed to imply acceptance of such work. Observation by City of the work shall not relieve Contractor of its responsibility to conduct its own comprehensive inspections of the work and to furnish materials and perform work in accordance with the Contract Documents.

15. Termination

City shall have the right to terminate Contractor's right to proceed with some or all of the work and may terminate this Contract for default by providing written notice thereof at least five (5) calendar days in advance of the termination date. The term "default" includes, but is not limited to: a) performance of work in violation of the terms of the Contract or other applicable law, order, regulation, permit or requirement; b) abandonment; c) assignment or subletting without City approval; d) bankruptcy or appointment of a receiver for Contractor's property; e) refusal of failure to properly prosecute the work; f) use of materials, supplies, plant or equipment of improper quality or quantity; g) refusal or failure to use an adequate number of properly skilled workers; h) failure to provide proper workmanship; i) failure to take effective steps to end a labor dispute; j) performance of this Contract in bad faith or k) failure to pay subcontractors. Upon such termination, City shall have the right to complete the work, or the portion involved, by whatever means and methods it deems expedient, at the Contractor's

expense which the City can deduct from any amounts due Contractor. City at its sole discretion may withhold any payment otherwise due Contractor until completion and final settlement of the work covered by the notice of default.

City may also terminate the Contract for convenience if in the best interests of City upon thirty (30) calendar days notice in advance. In such event, Contractor shall be paid for all substantiated direct costs of materials furnished and work performed up to the date of termination any additional compensation that City deems reasonable.

Upon receipt of a notice of termination, Contractor shall: a) stop all work unless directed otherwise; b) take such action to protect materials from damage; c) notify all subcontractors and suppliers that Contract is terminated; d) provide City with inventory list of materials previously produced, purchased or ordered and not yet used in the work; e) dispose of all materials not used on the work as directed by City; f) if directed by City, assign all rights and interests of Contractor under subcontracts or orders for the project; g) furnish any required documentation; and h) take any other actions as City may direct.

C. CONTRACTOR'S RESPONSIBILITIES

1. Responsibility for Damage

Contractor shall be responsible for any loss or damage that may happen to the work and for any loss or damage to any of the materials of other things used or employed in performing the work.

Contractor shall indemnify, defend and save harmless City and its officials, officers, employees, volunteers and agents against all suits, claims or losses (including attorneys' fees and expenses) that may be based on any injury or damage to, or death of any person or any damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Contract by Contractor, its subcontractors or employees, whether or not it shall be claimed that the injury was caused through an act or omission of Contractor, its subcontractors, employees or other agents, except for the sole negligence, active negligence or willful misconduct of City. Contractor shall, at its own expense, pay all charges of attorneys and all cost and other expenses arising or incurred in connection with such suits, claims or losses. If any judgment shall be rendered against City in connection with any such suit, claim or loss, Contractor shall at its own expense satisfy and discharge it.

2. Insurance

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property of the work hereunder by Contractor, his agents, representatives, and employees.

a. Minimum Scope and Limits of Insurance. Coverage shall be placed with insurers admitted in California with a current A.M. Best's rating of not less than A:VII:

(1) Contractor shall maintain general liability insurance with limits no less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.

(2) Contractor shall maintain automobile liability insurance with limits of no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of no less than \$2,000,000 per accident.

b. Other Insurance Provisions.

(1) As to the general liability, automobile liability and builder's risk property insurance policies, City and Emeryville Redevelopment Agency and their officers, officials, employees, agents and volunteers are to be covered as additional insured pursuant to an endorsement to the policy. The coverage shall contain no special limitations on the scope of protection afforded to City, Emeryville Redevelopment Agency and their officers, officials, employees, agents or volunteers.

(2) For any claims related to this project, Contractor's insurance coverage shall be endorsed to be primary insurance as respects City and its officers, officials, employees, agents or volunteers. Any insurance or self-insurance maintained by City of Emeryville and its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(3) For worker's compensation coverage, the insurer agrees by endorsement to waive all rights of subrogation against City, Redevelopment Agency and their officials, employees, and volunteers for losses arising from the work.

(4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City of Emeryville, its officers, officials, employees, agents or volunteers.

(5) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

(6) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to City.

(7) Any deductibles or self-insured retentions must be declared to and approved by City.

3. Payment of Taxes

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

To the extent reasonably feasible, Contractor will use sales tax reporting procedures which will provide City of Emeryville the greatest benefit from California sales/use tax revenue. Such procedures may include, when applicable, designating City of Emeryville as the point of sale/use of product where there is no clearly determinable point of sale/use, self-reporting tax on out of state purchases of goods used in City of Emeryville and reporting City of Emeryville as the origin of construction costs as allowed by the State Board of Equalization pursuant to their December 1994, Resolution pertaining to allocation of local tax by construction contractors. Notwithstanding the above, Contractor shall not be obligated to adopt any procedures pursuant to this section if such procedures result in significantly increased costs to Contractor (including loss of profits or risk of liability for taxes in multiple jurisdictions), or if such procedures are contrary to the sales and use tax laws or regulations of California or any other state.

4. Permits and Licenses

Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Contract. Contractor shall comply with all permits applicable to the work. Contractor has and shall maintain the appropriate State Contractor's License, pursuant to Chapter 9 of Division 3 of the California Business and Professions Code.

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

The California Environmental Quality Act (Public Resources Code, Section 21000 to 21176) may be applicable to permits, licenses and other authorizations which Contractor must obtain from State or local agencies in connection with performing the work of the Contract. Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

5. Labor Code Requirements

Attention is directed to the following requirements of the Labor Code:

a. Hours of Labor. Eight hours labor constitutes a legal day's work. Contractor shall forfeit, as penalty to City, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Contract by Contractor or by any subcontractor 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 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 Contractor in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon compensation for all hours worked in excess of eight 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.

b. Labor Non-Discrimination. Attention is directed to Section 1735 of the Labor Code which provides Contractor 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 or sex of such persons, except as provided in Section 12940 of the Government Code.

c. Prevailing Wages. Contractor shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with said Section 1775, Contractor shall forfeit as a penalty to 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 Contract by him or by any subcontractor under him in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In adoption to said penalty and pursuant to said 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 Contractor.

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 on-line at their website at <http://www.dir.ca.gov>. It is mandatory for the Contractor and any

subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Contract.

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

City will not recognize any claim for additional compensation because of the payment by Contractor of any wage rate in excess of the prevailing wage rate set forth in the Contract. The possibility of wage increases is one of the elements to be considered by Contractor in determining his bid, and will not under any circumstances be considered as the basis of a claim against City on the Contract.

Attention is directed to the requirements of Section 1773.8 of the Labor Code. Contractor shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of said Section 1773.8.

d. Payroll Records. Contractor's attention is directed to the following provisions of Labor Code Section 1776. Contractor shall be responsible for the compliance with these provisions by his subcontractors.

(1) Each contractor and subcontractor 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.

The Contractor and all Subcontractors shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, monthly in a format prescribed by the Labor Commissioner.

(2) Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

e. 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."

6. 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 with regards to wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$15.69 per hour (as of July 1, 2018, 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.

7. Warranty

Contractor warrants that all materials and work furnished (1) shall meet all requirements and conditions of City's Contract and manufacturer's warranty if any; (2) shall be free from defects in design, material; workmanship and methods of installation; and (3) shall be fit for the purposes intended. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and nonconforming. This warranty by the Contract is in addition to any warranties or guarantees required or provided by the manufacturer or supplier.

Contractor shall correct the work at its own expense promptly after written notice from City to do so and pay for any damage to other property resulting from such nonconforming work. If Contractor fails to do so promptly, or in an emergency when delay could cause risk of damage or loss, then City take whatever actions are necessary to have the nonconforming work removed, replaced or corrected at the expense of Contractor and to recover its damages, costs and expenses, including withholding the amount from any payment that is due or to commencing an action against any performance bond.

Nothing in this section shall be construed to establish a period of limitation with respect to other obligations that Contractor may have under these Contract Documents.

8. Payment Bond.

A payment bond in an amount of 100% of the not to exceed amount of the Contract is required.

9. Independent Contractor Status

Contractor shall independently perform all work under this Contract and shall not be considered an agent or employee of City; nor shall Contractor's subcontractors or employees be considered as subagents of the Owner.

10. Hazardous Chemicals and Wastes

Should any release, discharge, leakage, spillage, emission or pollution of any hazardous chemicals or wastes occur due to Contractor's work, then Contractor at its sole cost, shall clean all affected property to the satisfaction of City and any governmental body with jurisdiction. Contractor shall immediately report any such release to the Director of Public Works.

If the performance of the work outlined by these Contract Documents creates any hazardous wastes, Contractor shall properly dispose of such wastes in full

accordance with federal, state and local laws, at its expense. Contractor shall provide City with written proof of its or its subcontractor's registration as a hazardous waste transporter.

11. Compliance with Laws

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

12. Noncollusion Declaration

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

13. Conflicts of Interest

Contractor covenants and declares that other than this Contract, it has no holdings or interests within the City of Emeryville nor business holdings or agreements with any official, employee or representative of City and shall disclose any such holdings or interests to City in writing.

14. Discrimination Prohibited

Contractor covenants and agrees that in performing the services required under this Contract, Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age or disability.

D. GENERAL PROVISIONS

1. Applicable Law

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.

2. Assignment and Subcontracting

Neither this Contract nor any interest herein nor any claim hereunder may be assigned or subcontracted by Contractor either voluntarily or by operation of law, without the prior written consent of City. No such consent shall relieve Contractor of its obligations to comply fully with the requirements of this Contract.

3. Records

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

4. 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 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.

5. Notices

a. Communications Relating to Daily Activities. All communications relating to the day-to-day activities of the work shall be exchanged between Public Works Operations staff for City and currently assigned supervisor for Contractor.

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

CITY

Director of Public Works
City of Emeryville
1333 Park Avenue
Emeryville, California 94608

Phone: 510-596-4330
FAX: 510-596-4389

CONTRACTOR

Bennett White
Integrity Construction Maintenance, Inc
3531 Gravenstein Hwy South
Sebastopol, CA 95472

6. No Personal Liability

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

7. **Entire Agreement**

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.

8. **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.

City and Contractor have executed this Contract on the date that it is executed by City of Emeryville.

CITY OF EMERYVILLE

Carolyn Lehr,
City Manager

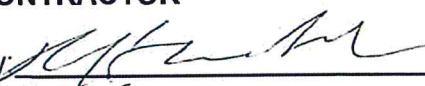
Date: _____

Approved as to form:



City Attorney

CONTRACTOR

By: 
Signature FOR ICM, INC

Printed name: BENNETT WHITE

Title: PRESIDENT

Date: 5-15-18