



City of Emeryville
CALIFORNIA

SPECIFICATIONS

For
PROJECT:

**City of Emeryville “Old” City Hall
and “New” City Hall Exterior Painting and cleaning**

PROJECT NO. EPW-24104

Issued for Bidding: June 12, 2024
Bids Open: June 26, 2024 at 10:00AM

For Use with the Following:

1. City of Emeryville Public Works Notice to Bidders Part A
2. STUDIO Miers|Chou|Poon Architecture - Drawings dated June 5th, 2024
3. STUDIO Miers|Chou|Poon Architecture - Specifications dated June 5th, 2024
- 4.

In accordance with Section 7-7.01(c) of Chapter 7 of Title 7 of the Emeryville Municipal Code, as City Engineer for the City of Emeryville, I do hereby exercise the discretion delegated to me and approve the plan or design of a construction of, or an improvement to, public property to which this statement and my signature is affixed.

Executed on _____ day of _____, _____.

**PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
1333 Park Avenue, Emeryville, CA 94608
Tel. (510) 596-4330**

NOTICE INVITING BIDS

PART A BID DOCUMENTS

<u>SECTION</u>	<u>TITLE</u>	
1	BIDDER'S CHECKLIST	A-1
2	BLANK - NOT USED	A-3
3	PROPOSAL	A-4
4	BIDDER'S BOND	A-9
5	NON-COLLUSION DECLARATION	A-11
6	SUBCONTRACTORS LIST	A-12
7	WORKERS COMPENSATION CERTIFICATE.....	A-13
8	CONTRACT.....	A-14
	• Sample Contract	
	• Performance Bond	
	• Payment Bond	
	• Guarantee	

PART B GENERAL PROVISIONS

<u>SECTION</u>	<u>TITLE</u>	
1	GENERAL	B-2
2	BIDDING.....	B-5
3	CONTRACT AWARD AND EXECUTION.....	B-10
4	SCOPE OF WORK	B-12
5	CONTROL OF WORK	B-15
6	CONTROL OF MATERIALS	B-25
7	LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC	B-26
8	PROSECUTION AND PROGRESS	B-42
9	PAYMENT	B-46

PART C SPECIAL PROVISIONS

<u>SECTION</u>	<u>TITLE</u>	
1	MISCELLANEOUS	C-2
2 – 8	BLANK.....	C-10
9	DESCRIPTION OF WORK	C-11
10	CONSTRUCTION DETAILS	C-12

PART D EXHIBITS

Exhibit D: Painting: Limits of Work and Notes (Sheets 1-3)

NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN THAT sealed bids will be received by the City of Emeryville, Alameda County, California, (hereinafter "City") at the Office of the Director of Public Works, 1333 Park Avenue, Emeryville, CA 94608, **until 10 AM, June 26, 2024**, at which time bids will be publicly opened for the following project:

**City of Emeryville "Old" City Hall
and "New" City Hall Exterior Painting and cleaning**

PROJECT NO. EPW-24104

The Project Scope of Work includes;

- A. Work Covered by Contract Documents includes exterior painting of both the existing "Old" and "New" City Hall" as well cleaning of the "New" City factory painted components such as the metal wall panels and window wall which will not be painted. Work includes;
1. Painting of the exterior wood windows at the "Old" City Hall. All windows will be upgraded and repaired and most sash replaced under a separate contract with a wood window subcontractor. The wood window subcontractor's work will include priming of the exterior new sash only – both interior and exterior. The painting work under this contract will be to apply final paint colors to all existing and replaced windows as well as to re stain or paint interior new sash that has been replaced. It should be assumed that 42 of the 50 existing windows will have their sash replaced as per the window schedule included in the contract documents.
 2. Painting work of the "Old" City Hall windows will also include the refurbishing of the existing exterior frame including sills, jambs and heads. These exterior frames vary in condition and are identified as such in the door schedule included in the contract drawings. The refinishing of these exterior frames so as to be "paint ready" is to be broken out as a separate cost. Should any frame need to be replaced, that will be treated as a separate added cost. And a change order issued for it. It is our current assessment that most if not all frames can be reconditioned in place.
 3. Repair of exterior cement plaster areas at the "old" City Hall and repainting of all stucco as per the color drawings included in the contract documents.
 4. Cleaning of the concrete raised platform on the south side of the "old" City Hall.
 5. In addition to Painting of all exterior wood windows and stucco surfaces, also paint all exterior doors, metal handrails and other exposed painted metal surfaces
 6. Painting of all field constructed steel surfaces on the "new" City Hall including roof trusses, underside of metal deck soffits, metal fences, metal painted handrails, other misc exposed metal surfaces such as pipes, vertical cantilevered fences, metal flashing, stucco soffits and all other surfaces noted on the drawings, or which are in need of painting. Painting of the south side stair is not included in the scope of work as it has been recently painted
 7. Cleaning of all Factory applied painted surfaces on the "new" City Hall including metal panels, window wall system (mullions/frames), glass and any other exposed factory applied painted surfaces.
 8. Scaffolding as needed.

The work, to be completed within **60 working days**, is more fully described in the Contract Documents, as defined in the Contract provided in Section 8, Part A, Bid Documents. The engineer's estimate for this project is **275,000.00** Liquidated Damages in the Amount of **\$500.00** per calendar day will be assessed for failure to complete the contract work within the number of workdays specified.

Bidders and their proposed subcontractors shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents. Bidders bidding as the prime Contractor shall possess a valid California State Contractor's License, **and Classification C33 – Painting and Decorating** at the time of contract award and throughout the Contract term. The Contractor will also be required to ensure that all subcontractors working on the project are holding valid licenses suitable for their trade.

Bids shall be submitted on the forms included in Part A, Bid Documents, plainly endorsed with Bidder's name together with signed acknowledgment of any and all addenda. Bidder's attention is directed to the Section 2, Part B, Bidding. Bid Documents shall be securely sealed in a suitable envelope marked with the name and address of the Bidder, and marked in capital letters on the front of the envelope, as follows:

**City of Emeryville "Old" City Hall
and "New" City Hall Exterior Painting and cleaning**

PROJECT NO. EPW-24104

Whether mailed or personally delivered, all bids shall be securely sealed in a suitable envelope and addressed to the City Engineer, City of Emeryville, Alameda County, California, 1333 Park Avenue, Emeryville, CA 94608. No late bids will be accepted and will be returned unopened.

Each bid must be accompanied by a Bid Guaranty in the form of Cash, Bidder's Bond, Certified Check or Cashier's Check in an amount equal to at least ten percent (10%) of the Total Bid Price. The Bid Guaranty will be retained and applied to any and all damages sustained by the City in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it or furnish all required bonds and certificates of insurance.

Plans, Specifications, Bid Documents, Supplemental Specifications and any Addendum may be obtained free of charge from the City of Emeryville website at <http://emeryville.org/904/RFPs-Bids> or at www.ciplist.com.

The Contract awarded pursuant to this advertisement is subject to the State contract nondiscrimination and compliance requirements pursuant to California Government Code §12990.

The City of Emeryville hereby notifies all Bidders that it will affirmatively ensure that in any Contract awarded pursuant to this advertisement, disadvantaged business enterprises (DBEs) will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. DBEs are strongly encouraged to submit bids as both prime Contractors and subcontractors.

No pre-bid meeting

This is a Public Works Contract. In accordance with section 1720 et seq. of the Labor Code, the general prevailing wage rates as established by the Director of the California Department of Industrial Relations will apply. The prevailing wage rates established by the State Director of Industrial Relations can be viewed at the City's offices, are available on the State of California's website at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>, or can be obtained by mail addressed to: Prevailing Wage Unit, Division of Labor Statistics and Research, Department of Industrial Relations, P.O. Box 603, San Francisco, CA 94101.

No Contractor or subcontractor may be listed on a bid proposal or awarded a contract for a public works project unless registered with Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 at the time of bid. Each Bidder and subcontractor must submit proof of contractor registration with DIR (e.g. a hard copy of the relevant page of the DIR's database found at: <https://efiling.dir.ca.gov/PWCR/Search>). This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of the City retaining a portion of progress payments during the Project. Pursuant to California Civil Code Section 9950, the successful Bidder at the time the contract is awarded shall furnish a payment bond if civil work exceeds twenty-five thousand dollars (\$25,000) in the amount of 100% of the Total Contract Price. The successful Bidder shall also provide a performance bond in the amount of 100% of the Total Contract Price.

Attention is directed to the Contract Documents for complete details and bid requirements. Said Contract Documents shall be considered as a part of any Contract awarded pursuant to this Notice Inviting Bids.

All bids are to be compared on the basis of the City Engineer's estimate of the quantities of work to be done. The City of Emeryville reserves the right to reject any or all bids, and further reserves the right to waive formal irregularities as to any bid substantially in conformity with the specifications herein referred to. The City of Emeryville reserves the right to reject any and all bids or to waive any defects or irregularity in bidding in accordance with applicable law. In accordance with California Public Contract Code Section 20103.8, if the City elects to award a contract for performance of the project, the contract will be awarded in accordance with

California Public Contract Code Section 20162 and other applicable law to the responsible bidder submitting a responsive bid with the lowest total bid price. All bids will remain valid for 90 days after the bid opening. Except as permitted by law and subject to all applicable remedies, including forfeiture of bidder's security, bidders may not withdraw their bid during the 90-day period after the bid opening.

The Architectural firm STUDIO Miers has provided engineering services to the City for this project. Therefore, this firm, and any of their affiliates, partners, officers, employees, parent companies or subsidiaries are prohibited from being awarded the Contract for the project, subcontracting for a portion of the work under the Contract for the project, or supplying materials for the work under the Contract for the project. Accordingly, these persons and entities are ineligible to bid on the project and no Contract shall be awarded to such persons or entities identified as the Contractor, subcontractor or supplier on a submitted bid proposal for this Project.

All questions prior to award of the Contract shall be directed to the Project Manager Ali Ahmadzadeh aliahmadzadeh@emeryville.org. The deadline for submissions of initial questions and clarifications concerning the Contract Documents is **June 19, 2024, at 5:00pm**. Only signed Addenda issued by the City Engineer or Project Engineer are binding. The City of Emeryville hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. **DBEs are strongly encouraged to submit bids as both primes and subs.**

By order of the City Council of the City of Emeryville, Alameda County, California, June 12, 2024.



Ben Mohamed Alaoui
Director of Public Works, City of Emeryville

Date: 6/12/24

PART A

BID DOCUMENTS

PROJECT:

**City of Emeryville “Old” City Hall
and “New” City Hall Exterior Painting and cleaning**

PROJECT NO. EPW-24104

SECTION 1

BIDDER'S CHECKLIST

All items on the Bidder's Checklist should be checked next to each item and must be initialed and dated at the bottom for the Proposal to be considered complete. The City of Emeryville reserves the right to award a Contract in a manner and on the basis which will best serve the City.

The Bidders' attention is specifically called to the following forms which must be executed in full as required:

1. (a) Bid Sheets
The Base Bid Price, Add Alternate Price and Total Bid Price must be shown in the space on the Bid Proposal form provided.
- (b) Bid Proposal Form
A Bid Proposal form must be filled in, signed and submitted for the Bid Documents to be considered complete.
2. Bidder's Bond (Accompanying Bid)
If not otherwise providing cash, cashier's check or certified check with its Bid Proposal as its bid guaranty, a Bidder's Bond form must be filled out, signed, and submitted with the Bid Proposal for the Bid Documents to be considered complete. The surety's power of attorney must be attached. Original signatures are required.
3. Non-Collusion Declaration
A Non-Collusion Declaration form must be filled out, signed, and submitted with the Bid Proposal for the Bid Documents to be considered complete.
4. Subcontractors List
A Subcontractors List form must be filled out and submitted with the Bid Proposal for the Bid Documents to be considered complete.
5. Workers Compensation Certificate
The Bidder acknowledges that he/she must sign and attach any applicable Workers Compensation Certificate to the Bid Proposal.
6. Waste Management Plan
Applicant is notified of need to prepare a Waste Management Plan as a project submittal. On-line system is available at www.emeryville.wastetracking.com/#
Check here signifies awareness of and intent to prepare, if awarded a contract.
7. Bond Requirements
The Bidder understands that a performance bond issued by an approved surety equaling one hundred percent (100%) of the Total Contract Price amount will be required. A payment bond equaling one hundred percent (100%) of the Total Contract Price amount will also be required.

8. Addenda

The Bidder acknowledges that he/she must sign and attach any applicable addenda to the Bid Proposal for the Bid Documents to be considered complete.

Initial: _____ Date: _____

SECTION 2

Not Used

SECTION 3

PROPOSAL

To the Honorable City Council of the City of Emeryville, Alameda County, California.

PROJECT:

**City of Emeryville "Old" City Hall
and "New" City Hall Exterior Painting and cleaning**

PROJECT NO. EPW-24104

Name of Bidder _____

Street Address _____

City, State, Zip Code _____

Telephone No. _____

Email Address _____

FOR USE WITH THE FOLLOWING:

The Contract Drawings are generally titled **CITY OF EMERYVILLE "OLD" CITY HALL AND "NEW" CITY HALL EXTERIOR PAINTING AND CLEANING PROJECT NO. EPW-24104.**

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items.

The Bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between item price and the total set forth for the item, the item price shall prevail, provided, however, if the amount set forth as an item price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or in the case of unit basis items, is the same amount as the entry in the "Item Total" column, then the amount set forth in the "Item Total" column for the item shall prevail in accordance with the following:

PROPOSAL (CONT.) Project No. EPW-24104

- (1) As to lump sum items, the amount set forth in the "Item Total" column shall be the item price.
- (2) As the unit basis items, the amount set forth in the "Item Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

If this proposal shall be accepted and the undersigned shall fail to enter into the Contract and furnish the two (2) bonds in the sums to be determined as aforesaid with surety satisfactory to the Department of Public Works and provide the appropriate insurance certificates within ten (10) calendar days after the Bidder has received notice from the City Engineer that the Contract has been awarded, the City may, at its option, determine that the Bidder has abandoned the Contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of Emeryville. If the deadline to perform any act shall fall on a Saturday, Sunday or legal holiday of the City, then the deadline to perform said act shall fall on the next regular business day.

The undersigned, as Bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firms, or corporation and in submitting this proposal, the undersigned Bidder agrees that he has carefully examined the location of the proposed work, the annexed proposed form of Contract, and the plans and specifications therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the City of Emeryville in the form of a copy of the Contract annexed hereto to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and according to the requirements of the City Engineer as therein set forth, and that he will take in full payment therefore the following item prices to wit:

BID SHEET

Project No. EPW-24104
CITY OF EMERYVILLE "OLD" CITY HALL
AND "NEW" CITY HALL EXTERIOR PAINTING AND
CLEANING
EMERYVILLE, CALIFORNIA

Contractor: _____

Date: _____

Plan Nos.: EPW-24104

Amount rounded to Nearest:
 \$.01

No.	CONTRACT BID ITEMS				Item Price
1	"Old" City Hall Exterior and Interior painting of the Exterior window sashes (42 new sashes provided under separate contract to be primed. 8 exiting curved windows to remain)				
2	"Old" City Hall Repair as needed and repainting of all stucco surfaces				
3	"Old" City Hall cleaning of concrete bench on south side				
4	"Old" City Hall painting of all exposed field painted building and site work steel including but not limited to all guardrails, handrails and perimeter security fencing				
5	"New" City Hall painting of all field painted steel building elements including but not limited to roof trusses, underside of metal deck, exposed flashing, metal pipes, etc. Also painting stucco soffits. The existing steel stair on the south side of the building is excluded from the scope of work.				
6	"New" City Hall painting of all field painted steel site elements including but not limited to all guardrails, handrails and perimeter security fencing				
7	Scaffolding for both buildings				
Sub-Total BID SHEET "City of Emeryville					
TOTAL BID PRICE: City of Emeryville "Emeryville Old City Hall and New City Hall Exterior Painting"					

Bidder:

 Authorized Signature / Title

PROPOSAL (CONT.) Project No. EPW-24104

Accompanying this proposal is _____
(Notice: insert the words CASH (\$), CASHIER'S CHECK, CERTIFIED CHECK, OR BIDDERS BOND)

in an amount equal to at least ten percent of the total of the Total Bid Price.

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If Bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual copartners composing firm; if Bidder or other interested person is an individual, state first and last names in full.

Licensed in accordance with an act providing for the registration of Contractors:

Contractor: License No. _____

Licensee Name _____

License Qualifier _____

Date Issued _____

Other License Classifications Hazardous Substances Removal: License No _____

Licensee Name (May be Subcontractor) _____

License Qualifier _____

Date Issued _____

DIR Registration Number _____

PROPOSAL (CONT.) Project No. EPW-24104

ADDENDA This Proposal is submitted with respect to the changes to the contract included in addenda numbers _____ (Fill in any addenda numbers if addenda have been received.)

By my signature on this proposal, I certify, under penalty of perjury, under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Section 10162, 10232 and 10285.1 are true and correct and that the Bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal, I further certify, under penalty of perjury, under the laws of the State of California, that the Non-Collusion Affidavit required by Public Contract Code Section 7106 is true and correct.

SIGN HERE>>>

by: _____

its: _____

Date: _____

END OF PROPOSAL

SECTION 4

BIDDER'S BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, as Principal, and _____, as Surety, are held and firmly bound unto the City of Emeryville, a municipal corporation located in Alameda County, State of California (hereinafter "City"), in the sum of (\$) _____, being at least ten percent (10%) of the total amount of the Grand Total Bid Price, for the payment of which sum in lawful money of the United States of America to the City of Emeryville we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted said bid to the City for the **CITY OF EMERYVILLE "Emeryville Old City Hall and New City Hall Exterior Painting" Project No. EPW-24104.**

NOW, THEREFORE, the condition of the above obligation is such that if a Contract is awarded by the City within the time and in the manner required by the specifications for the Project, and a written Contract is entered into with the City and the requisite bond or bonds and insurance certificates are furnished, then this obligation shall become null and void, otherwise to remain in full force and effect for ninety (90) days following the public opening of bids for this solicitation.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorneys fee to be fixed by the Court.

Dated _____, 2024__.

TO BE CONSIDERED COMPLETE,
BOTH THE PRINCIPAL AND
SURETY MUST SIGN THIS
BIDDER'S BOND. IN ADDITION,
THE SURETY'S SIGNATURE MUST
BE NOTARIZED AND
THE SURETY'S POWER OF ATTORNEY
MUST BE ATTACHED. ORIGINAL
SIGNATURES ARE REQUIRED

Principal

By: _____

Surety

By: _____

Address of Surety

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF ALAMEDA



ss

On _____, 2024__ before me, _____,
Notary Public, _____ personally appeared

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

(Seal Above)

END OF BIDDERS BOND

SECTION 5

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

The undersigned declares under penalty of perjury that the information contained in this proposal and all accompanying documents are true and correct.

Executed on _____

Legal Company Name

By: _____

Title: _____

Date: _____

SECTION 6

SUBCONTRACTORS LIST

In accordance with Section 2-1.10 "Subcontractors List" of the Standard Specifications for this Contract, the following list of Subcontractors is submitted with the Proposal and made a part thereof.

1. Name of Subcontractor/Supplier _____
License No. _____
Dept. of Industrial Relations Registration No. _____
Address _____
Work to be Performed _____
Bid Sheet Item No. _____
Percentage of Item No. to be Performed _____
Dollar Value of Work _____

2. Name of Subcontractor/Supplier _____
License No. _____
Dept. of Industrial Relations Registration No. _____
Address _____
Work to be Performed _____
Bid Sheet Item No. _____
Percentage of Item No. to be Performed _____
Dollar Value of Work _____

3. Name of Subcontractor/Supplier _____
License No. _____
Dept. of Industrial Relations Registration No. _____
Address _____
Work to be Performed _____
Bid Sheet Item No. _____
Percentage of Item No. to be Performed _____
Dollar Value of Work _____

SECTION 7

WORKERS' COMPENSATION CERTIFICATE

To be executed by Bidder and submitted with bid

By signing below, Bidder is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provision of that code, and if awarded a Contract, Bidder will comply with such provisions before commencing the performance of the work of this Contract.

Firm Name _____

Signature of Authorized Official _____

Printed Name of Authorized Official _____

Title of Authorized Official _____

Date _____

SAMPLE CONSTRUCTION CONTRACT

This Contract is made and entered into this day of _____, 202__, by and between CITY OF EMERYVILLE, a municipal corporation ("**City**") and _____ ("**Contractor**").

WITNESSETH:

WHEREAS, by Resolution No. _____, the City Council of the City of Emeryville has authorized the Director of Public Works to solicit public bids for **SAN PABLO AVENUE MIDBLOCK CROSSWALK PROJECT, Project No. EPW-19103, CIP No. 18221006 (the "Project")**; and

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

WHEREAS, Contractor submitted the lowest responsible bid; and

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

NOW, THEREFORE, the parties mutually agree as follows:

1. Contract Documents

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

- a. Amendments to this Contract
- b. Contract
- c. Addenda to Invitation for Bid
- d. Supplemental Specifications
- e. Instructions to Bidders
- f. City of Emeryville Standard Specifications
- g. State of California Department of Transportation Standard Plans (2015)
- h. State of California Department of Transportation Standard Specifications (2015)
- i. Project Plans, Specifications, and Contract Drawings for **SAN PABLO AVENUE MIDBLOCK CROSSWALK PROJECT, Project No. EPW-19103, CIP No. 18221006**
- j. Required bond documents
- k. Notice to Contractors
- l. Contractor's Bid and Proposal, as accepted by City
- J. Exhibit A: [Reserved]
- K. Exhibit B: Insurance Requirements

2. Scope of Work

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

3. Price

The total amount to be paid under this Contract for all of the work set forth in Section 2 above is not to exceed \$ (DOLLARS) ("Total Contract Price"). This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

4. Time for Completion

After the Contract has been executed by City, Contractor shall begin work within **seven (7) calendar days** after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **Thirty Five (35) working days** from the effective date of the Notice to Proceed. Liquidated Damages in the Amount of **\$900 per calendar day** will be assessed for failure to complete the contract work within the number of workdays specified.

5. Indemnification

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

contractors who are directly responsible to the City, or for defects in design furnished by those persons

6. No Waiver

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

7. Notices

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

City
City of Emeryville
Attn:
1333 Park Ave
Emeryville, CA 94608

Contractor

8. Entire Contract

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

9. 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.

IN WITNESS HEREOF, City and Contractor have caused this Contract to be executed as of the date first above written.

CITY OF EMERYVILLE

Christine Daniel, City Manager

Approved as to form:

City Attorney

Contractor

Firm Name: _____

Address: _____

Telephone: _____

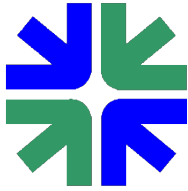
Fax No: _____

Email Address: _____

SIGN HERE >>>

by: _____

its: _____



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to , .

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract
- Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This

City of Emeryville | Contract Insurance Requirements (Exhibit B)

REV 08/2020

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability

All Contract Types

\$1,000,000.00 per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

Construction Specific

\$2,000,000.00 per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

Automobile Liability

\$2,000,000.00 per accident for bodily injury and property damage.

Professional Liability / Errors and Omissions

\$2,000,000.00 per claim and aggregate.

Workers' Compensation and Employer's Liability

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

Pollution Liability Insurance

\$2,000,000.00 per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

City of Emeryville | Contract Insurance Requirements (Exhibit B)

REV 08/2020

General Liability

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

Automobile Liability

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

Professional Liability Coverage

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

City of Emeryville | Contract Insurance Requirements (Exhibit B)

REV 08/2020

- Workers' Compensation and Employer's Liability Coverage**
The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

- Pollution Liability Coverage**
(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. NO SPECIAL LIMITATIONS

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than

City of Emeryville | Contract Insurance Requirements (Exhibit B)

REV 08/2020

A-VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

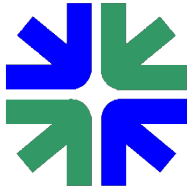
7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.

*Attach:
Insurance Certificate and Endorsements*



City of Emeryville

CALIFORNIA

EXHIBIT C

City Supplemental Terms and Conditions

As used in this Exhibit C, Contractor refers to , .

1. INSURANCE

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

2. PAYMENT OF TAXES

2.1 *Taxes Included*

The lump sum and rates set forth in **Exhibit A** 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.

2.2 *Business Tax*

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.

3. 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 Work contracted for under this Contract.

City of Emeryville | Contract Insurance Requirements (Exhibit B)

REV 08/2020

REV 09/2021

Page 1 of 6

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](#).

4. CALIFORNIA LABOR CODE REQUIREMENTS

- A. Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- B. If the Work is being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Work must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

City of Emeryville | City Supplemental Terms and Conditions

REV 09/2021

- C. This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. Pursuant to the requirements of section 1860 of the California Labor Code, Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:
- "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- E. Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

5. 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.

6. NONCOLLUSION DECLARATION

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

7. DISCRIMINATION PROHIBITED

Contractor covenants and agrees that in performing the Work required under this Contract, Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

8. BONDS (REQUIRED FOR CONTRACT PRICES \$25,000 AND GREATER)

8.1 Payment Bond

Required / **Not Required**

If required for this Contract, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Total Compensation, and which conforms with the requirements of Civil Code section 9550 et seq., as may be amended from time to time.

8.2 Performance Bond

Required / **Not Required**

If required for this Contract, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Total Compensation to guarantee the faithful performance of the Work.

8.3 Bond Provisions

Any and all bonds required for this Contract shall be in a form acceptable to the City Attorney. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein. Any alteration or alterations made in the Plans and Specifications which are a part of this Contract or in any provision of this Contract shall not operate to release any surety from liability on any required bond and the consent to make such alterations is hereby given. Any surety on such bonds hereby waives the provisions of Section 2819 of the Civil Code.

9. CITY LABOR REQUIREMENTS

- A. As of the Effective Date, compliance with the City's living wage ordinance is **required** / **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.
- B. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.
- C. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.
- D. Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$18.00 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.
- E. In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

10. RECORDS

Contractor will permit City to audit, examine, and make copies of all contracts, invoices, materials, payrolls, records of personnel, 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.

11. NO PERSONAL LIABILITY

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

12. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that,

WHEREAS, the City of Emeryville, a municipal corporation located in Alameda County, State of California (hereinafter referred to as "City"), has entered into a Contract with _____, (hereinafter referred to as "Principal"), to construct the **CITY OF EMERYVILLE "OLD CITY HALL EXTERIOR RENOVATION AND "NEW" CITY HALL EXTERIOR PAINTING AND CLEANING PROJECT NO. EPW-24104.**; and

WHEREAS, the Principal is required under the terms of the Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the City in the penal sum of (\$ _____), lawful money of the United States of America, being not less than one hundred percent (100%) of the Contract Amount, to be paid to the City or its successors and assigns; for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bound Principal, or its heirs, executors, administrators, successors, transferees, or assigns approved by the City, shall promptly and faithfully perform the covenants, conditions, and agreements in the Contract until completion, during the original term and any extensions thereof as may be granted by the City, with or without notice to Surety, and shall also promptly and faithfully perform all covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, provided on the Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

FURTHERMORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that upon Final Completion of the Contract, the above obligation shall be reduced to the amount of _____ Dollars, (\$ _____), being not less than twenty percent (20%) of the Contract Amount, and shall hold for a period of two (2) years, during which time if the above bound Principal, or its heirs, executors, administrators, successors, transferees, or assigns shall fail to make full, complete and satisfactory repair and replacements or totally to protect the City from loss or damage made evident during said period from the date of Final Completion of the Contract, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, or failure to satisfy the warranty as set forth in the Contract, the above obligation in said sum of \$ _____, shall remain in full force and effect, otherwise the above obligation shall be void.

Whenever Principal shall be declared by the City to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly do one of the following at the City's election:

1. Undertake through its agents or independent Contractors, reasonably acceptable to the City, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages.
2. Reimburse the City for all costs the City incurs in completing the Contract, and in correcting, repairing or replacing any defects in materials or workmanship and/or materials and workmanship which do not conform to the specifications in the Contract.

Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall release or exonerate the Surety on this bond or in any way affect its obligations under this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the Contract Documents.

The Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against the Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the City's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or its successors or assigns.

In the event the City, or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then in addition to the penal sum hereinabove specified, Principal and the Surety, jointly and severally, agree to pay to the City or its successors or assigns, a reasonable sum on account of its attorney's fees incurred in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

Principal

Name

Title

Signature

(SEAL)

Surety

Name

Title

Signature

(SEAL)

**Note: To be considered complete, both the Principal and an admitted Surety Insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign the Performance Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney*

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that

WHEREAS, the City of Emeryville, a municipal corporation located in Alameda County, State of California (hereinafter "City"), has awarded a contract to _____, (hereinafter "Principal"), to construct the **CITY OF EMERYVILLE "OLD CITY HALL EXTERIOR RENOVATION AND "NEW" CITY HALL EXTERIOR PAINTING AND CLEANING PROJECT NO. EPW-24104.**; and

WHEREAS, the Principal is required to furnish a bond in connection with the Contract, providing that if Principal, or any of it or its subcontractors, shall fail to pay for any materials, provisions, or other supplies or teams used in, upon, for or about the performance of the Work contracted to be done, for any work or labor thereon of any kind, or claims to which reference is made in Section 9554 of the Civil Code, the Surety of this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, we, the undersigned Principal, and _____, as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars, (\$ _____), lawful money of the United States of America, being not less than one hundred percent (100%) of the Contract Amount, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal, or its heirs, executors, administrators, successors, transferees, assigns, or subcontractors, shall fail to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under this Contract, or any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractors and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified in this bond and will also pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall inure to the benefit of any and all persons named in Section 9100 of the Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

This bond is given to comply with Sections 9550 and 9554 of the Civil Code. The liability of the PRINCIPAL and SURETY hereunder is governed by the provisions of said Code, all acts amendatory thereof, and all other statutes referred to therein, including Section 8152 of the Civil Code.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same shall in any way affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Contract Documents.

IN WITNESS WHEREOF, the above bounded parties have executed this instrument under their seals this ____ day of _____ 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Principal

Name

Title

Signature

(SEAL)

Surety

Name

Title

Signature

(SEAL)

**Note:*

To be considered complete, both the Principal and an admitted Surety Insurer authorized by the California Insurance Commissioner to transact surety business in the State of California must sign the Payment Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney must be attached.

GUARANTEE

TO THE CITY OF EMERYVILLE for construction of the following Project:

CITY OF EMERYVILLE "OLD CITY HALL EXTERIOR RENOVATION AND "NEW" CITY HALL EXTERIOR PAINTING AND CLEANING

PROJECT NO. EPW-24104.; and

By signing below, Contractor hereby warrants and guaranties to City of Emeryville all ("City") construction performed on this Project, including all material and equipment incorporated therein, as set forth below:

1. Pursuant to this Guarantee, Contractor agrees to unconditionally guarantee 1) the quality and adequacy of all of work provided on the Project including, without limitation, all labor, materials, workmanship, methods of installation, and equipment provided by Contractor and/or its Subcontractors (of all tiers) in connection with the Work under normal application, installation, and use and service conditions (collectively "Work"); and 2) that the work is fit for the purposes intended. The Guarantee provided hereunder shall become effective on the date of Substantial Completion; or where applicable, the Guarantee shall become effective on the first day following Substantial Completion of a specifically defined phase of the Project; or on such other date as may be specified elsewhere in the Contract Documents; and once effective, the Guarantee shall remain operative and shall bind Contractor as further described herein for a period of two (2) years, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents ("Warranty Period").

This Guarantee is in addition to any warranties or guarantees required or provided by the manufacturer or supplier or otherwise provided at law with respect to Contractor's duties, obligations and performance under the Contract Documents.

2. Neither final payment nor use or occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guarantee or relieve Contractor of liability with respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within the Warranty Period.

3. If, within the Warranty Period, the Work, or any portion thereof, is found to be defective, the City shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs performed by Contractor. Such repairs or replacements shall include, without limitation, removal of any such defective Work and replacement of such Work with Work that is not defective, and satisfactory correction, or removal and replacement of any damage to other Work or the work of others resulting therefrom.

If City elects to have said repairs or replacements performed by Contractor, Contractor shall promptly, without cost to City, and in accordance with City's written instructions, correct such defective Work. If City elects to perform the repairs or replacements, Contractor agrees to pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement by City. While carrying out correction, or removal and replacement of defective or nonconforming Work the Contractor must provide the same insurance specified before Contract acceptance. Nonconforming Work that is remedied pursuant to this Warranty shall be subject to an extended warranty obligation for the period of two (2) years after the acceptance of the repairs to the nonconforming work.

4. Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though Work required to be provided under the Contract Documents has been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the applicable Warranty Period.

5. This Guarantee is not in lieu of any other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents, and is in addition to any warranties or guarantees required or provided by manufacturers or suppliers. In the event of any conflict or inconsistency between the terms of this Guarantee and any obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

6. If the Contractor fails or refuses to comply with its obligations under this Guarantee, City shall be entitled to all costs and expenses, including attorneys' fees, reasonably incurred by reason of the said failure or refusal.

Contractor

Date

Contractor's Name (print)

Address

City/State/Zip

Phone

Fax No:

END OF DOCUMENT