

## CONTRACT

This Contract is made and entered into as of 06/17/2022, by and between **CITY OF EMERYVILLE**, a municipal corporation ("**City**") and **BRANNON CORPORATION** ("**Contractor**").

### WITNESSETH:

**WHEREAS**, by Resolution No. 22-34, the City Council of the City of Emeryville has authorized the Director of Public Works to solicit public bids for **POINT EMERY SHORELINE PROTECTION**, Project No. **18101**, CIP No. **16475021** (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. Project Specifications PARTS A, B, C, D, for **POINT EMERY SHORELINE PROTECTION**, Project No. **18101** CIP No. **16475021**
- e. Project Plans for **POINT EMERY SHORELINE PROTECTION**, Project No. **18101**, CIP No. **16475021**  
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)
- j. Required bond documents
- k. Notice to Contractors

Contract No. 21118E-0000-PW02  
Reoslution No. 22-34

CIP No. 16475021  
Project No. EPW-18101

- I. Contractor's Bid and Proposal, as accepted by City
- m. 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 **EIGHT HUNDRED TWENTY THOUSAND AND EIGHT HUNDRED DOLLARS AND NO CENTS (\$820,800.00) ("Total Contract Price")**. This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

## **4. Time for Completion**

After the Contract has been executed by City, Contractor shall begin work within **seven (7) calendar days** after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **forty (40) 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: Michael Roberts  
1333 Park Ave  
Emeryville, CA 94608

### **Contractor**

Brannon Corporation  
Attn: Paul Brannon  
10492 Dougherty Ave  
Morgan Hill, CA 95037

## **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

DocuSigned by:

*Pedro Jimenez, Acting City Manager*

52E50B02CB32478...

Christine Daniel, City Manager

Approved As To Form:

DocuSigned by:

*John Kennedy*

2C934D02DB55467...

City Attorney

CONTRACTOR

Firm Name: Brannon Corporation

Address: 10492 Dougherty Ave  
Morgan Hill, CA 95037

Telephone: 408-294-2910

Fax No: 408-294-2920

Email Address: bids@brannondemo.com  
paulb@brannondemo.com

DocuSigned by:

*Paul Brannon*

0726EC25A62446E...

**SIGN HERE >>>**

by: \_\_\_\_\_

its: Owner





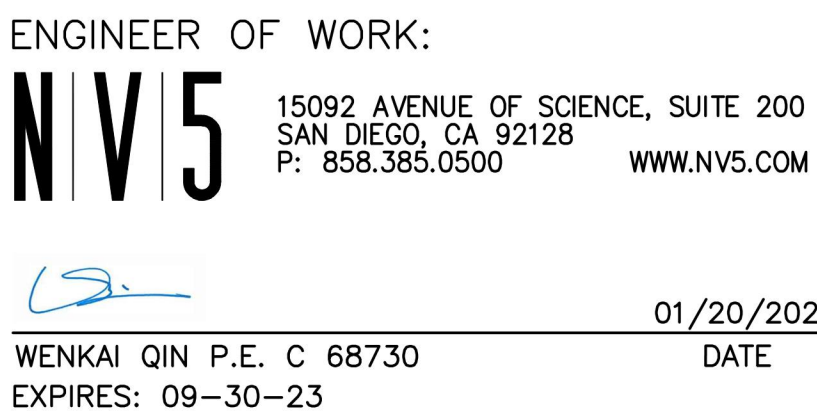
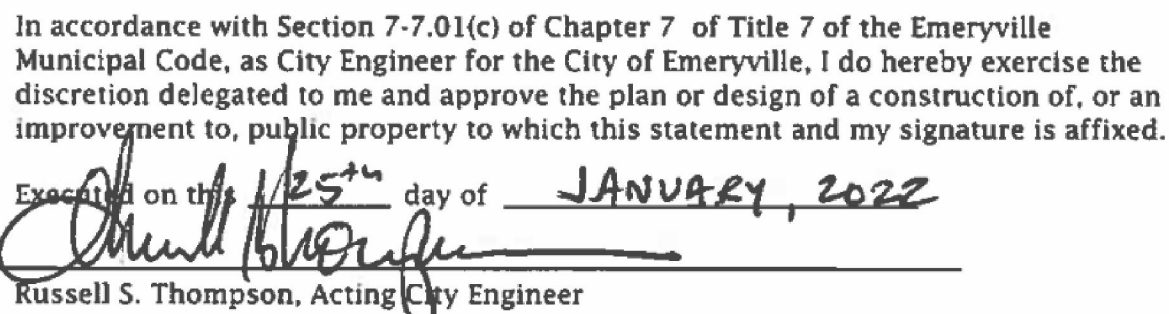
# PROJECT PLAN

## JANUARY 2022



AC	ASPHALT CONCRETE
APN	ASSESSOR PARCEL NUMBER
ASTM	AMERICAN SOCIETY FOR TESTING AND MATERIALS
ELEV	ELEVATION
(E)	EXISTING
FWY	FREEWAY
MLLW	MEAN LOWER LOW WATER
MIN	MINIMUM
MAX	MAXIMUM
MHW	MEAN HIGH WATER
(N)	NEW
PED	PEDESTRIAN
SWL	STILL WATER LEVEL
TYP	TYPICAL

1	TITLE SHEET AND PARCEL MAP
2	EXISTING SITE CONDITION
3	PROPOSED REVETMENT PLAN
4	REVETMENT SECTIONS OF SOUTHERN SHORELINE
5	REVETMENT SECTIONS OF NORTHERN SHORELINE
6	BEACH CLEAN PLAN
7	PUBLIC ACCESS AND AMENITIES PLAN
A1	TOPOGRAPHIC SURVEY BY TOWILL - EXHIBIT 1
A2	TOPOGRAPHIC SURVEY BY TOWILL - EXHIBIT 2



1. HORIZONTAL DATUM: NAD83
2. VERTICAL DATUM: NAVD88

								DRAWN	CRC	DATE	01/20/22	SCALE: AS NOTED			
	01/20/22							CHECKED	WQ			SHEET 1 OF 7 SHEETS			
		227521-0001151.00						CORRECT				DRAWING NUMBER			
NO.	DATE	JOB NO.	REVISION	BY	CH	COR	APP	APPROVED							

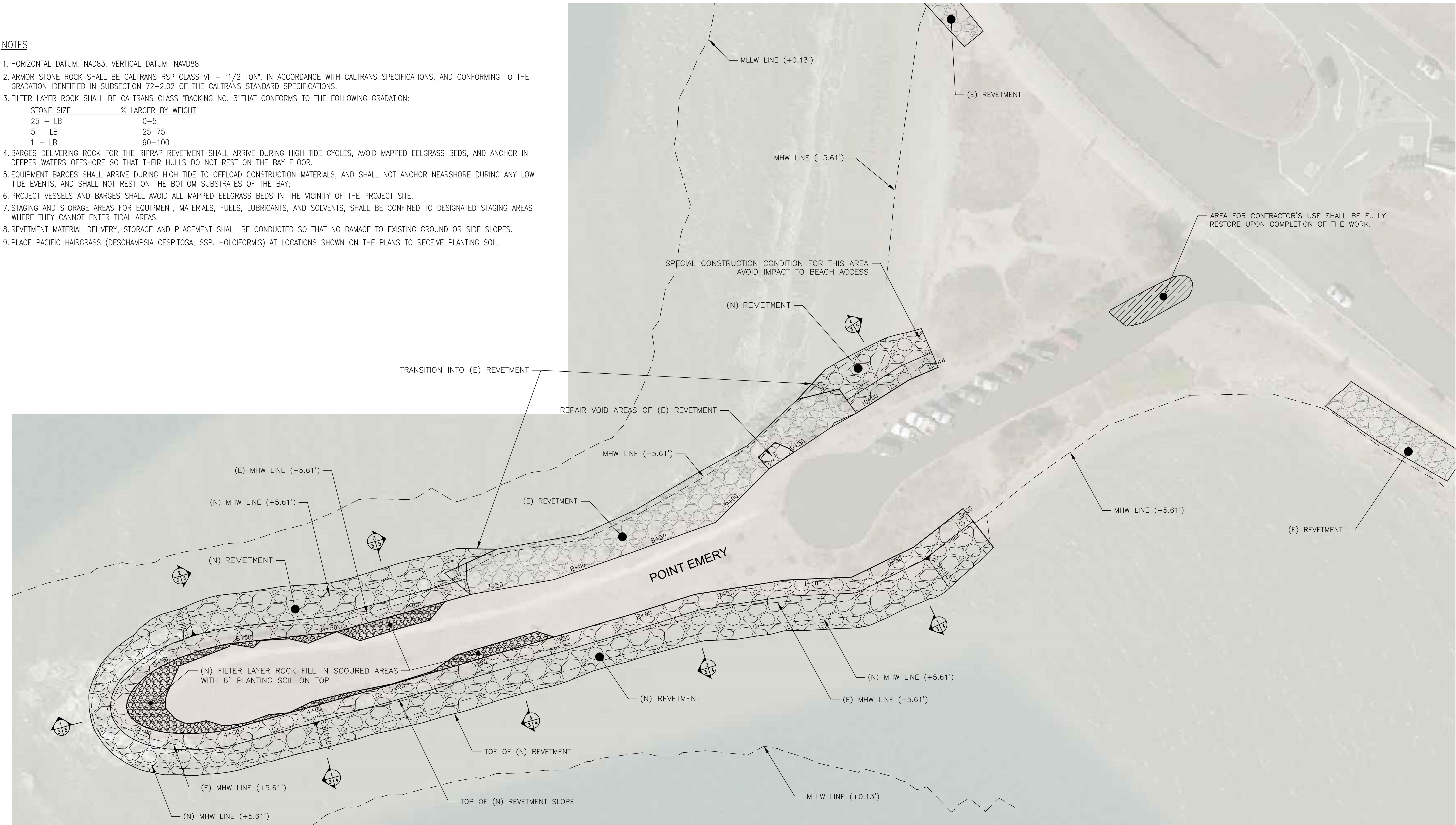
TITLE SHEET AND PARCEL MAP									
SHORELINE PROTECTION OF POINT EMERY									
1333 PARK AVENUE, EMERYVILLE CA 94608									
PUBLIC WORKS DEPARTMENT CITY OF EMERYVILLE									
DRAWN	CRC	DATE	01/20/22	SCALE: AS NOTED					
CHECKED	WQ			SHEET 1 OF 7 SHEETS					
CORRECT				DRAWING NUMBER					
APPROVED				<div style="display: flex; justify-content: space-between;"> <div style="width: 20%;"></div> <div style="width: 20%;"></div> <div style="width: 20%;"></div> <div style="width: 20%;"></div> <div style="width: 20%;"></div> </div>					



NOTES

1. HORIZONTAL DATUM: NAD83. VERTICAL DATUM: NAVD88.
2. ARMOR STONE ROCK SHALL BE CALTRANS RSP CLASS VII - "1/2 TON", IN ACCORDANCE WITH CALTRANS SPECIFICATIONS, AND CONFORMING TO THE GRADATION IDENTIFIED IN SUBSECTION 72-2.02 OF THE CALTRANS STANDARD SPECIFICATIONS.
3. FILTER LAYER ROCK SHALL BE CALTRANS CLASS "BACKING NO. 3" THAT CONFORMS TO THE FOLLOWING GRADATION:

STONE SIZE	% LARGER BY WEIGHT
25 - LB	0-5
5 - LB	25-75
1 - LB	90-100
4. BARGES DELIVERING ROCK FOR THE RIPRAP REVETMENT SHALL ARRIVE DURING HIGH TIDE CYCLES, AVOID MAPPED EELGRASS BEDS, AND ANCHOR IN DEEPER WATERS OFFSHORE SO THAT THEIR HULLS DO NOT REST ON THE BAY FLOOR.
5. EQUIPMENT BARGES SHALL ARRIVE DURING HIGH TIDE TO OFFLOAD CONSTRUCTION MATERIALS, AND SHALL NOT ANCHOR NEARSHORE DURING ANY LOW TIDE EVENTS, AND SHALL NOT REST ON THE BOTTOM SUBSTRATES OF THE BAY;
6. PROJECT VESSELS AND BARGES SHALL AVOID ALL MAPPED EELGRASS BEDS IN THE VICINITY OF THE PROJECT SITE.
7. STAGING AND STORAGE AREAS FOR EQUIPMENT, MATERIALS, FUELS, LUBRICANTS, AND SOLVENTS, SHALL BE CONFINED TO DESIGNATED STAGING AREAS WHERE THEY CANNOT ENTER TIDAL AREAS.
8. REVETMENT MATERIAL DELIVERY, STORAGE AND PLACEMENT SHALL BE CONDUCTED SO THAT NO DAMAGE TO EXISTING GROUND OR SIDE SLOPES.
9. PLACE PACIFIC HAIRGRASS (DESCHAMPSIA CESPIIOSA; SSP. HOLCIFORMIS) AT LOCATIONS SHOWN ON THE PLANS TO RECEIVE PLANTING SOIL.



File Name: W:\21-0001151\_Pt\_Emery\Cadd\Civil\90% Submittal\W5\_PtEmery 100% Submittal 24x36.dwg Jan 20, 2022 - 3:01 pm



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 this 12<sup>th</sup> day of JANUARY, 2022

*Russell S. Thompson*  
Russell S. Thompson, Acting City Engineer

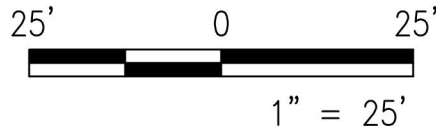


ENGINEER OF WORK:

**NV5**  
15092 AVENUE OF SCIENCE, SUITE 200  
SAN DIEGO, CA 92128  
P: 858.385.0500 WWW.NV5.COM

*Wenkai Qin*  
WENKAI QIN P.E. C 68730  
EXPIRES: 09-30-23

01/20/2022  
DATE



NO.	DATE	JOB NO.	REVISION	BY	CH	COR	APP
	01/20/22	227521-0001151.00					

PROPOSED REVETMENT PLAN

SHORELINE PROTECTION  
OF POINT EMERY

1333 PARK AVENUE, EMERYVILLE CA 94608

PUBLIC WORKS DEPARTMENT  
CITY OF EMERYVILLE

DRAWN	CRC	DATE	01/20/22	SCALE:	AS NOTED
CHECKED	WQ			SHEET	3 OF 7 SHEETS
CORRECT				DRAWING NUMBER	
APPROVED					





# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements For Point Emery Shoreline Protection Project EPW 18101

As used in this Exhibit B, Contractor refers to **BRANNON CORPORATION**.

#### 1. MINIMUM REQUIREMENTS

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

##### 1.1 *Minimum Scope of Insurance*

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

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

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
REV 08/2020

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

## **1.2 Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

☒ **General Liability**

☐ **All Contract Types**

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

**OR**

☐ **Construction Specific**

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

☒ **Automobile Liability**

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

☐ **Professional Liability / Errors and Omissions**

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

☒ **Workers' Compensation and Employer's Liability**

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

☒ **Pollution Liability Insurance**

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

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

## **2. INSURANCE ENDORSEMENTS**

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

**City of Emeryville | Contract Insurance Requirements (Exhibit B)**  
REV 08/2020☒ **General Liability**

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

☒ **Automobile Liability**

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

☐ **Professional Liability Coverage**

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

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
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 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**

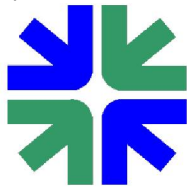
All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized 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 **BRANNON CORPORATION**.

#### 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.



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.

- 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 **\$16.97 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.