

RESOLUTION NO. 22-03

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Professional Services Contract With David Paul Rosen And Associates To Provide Developer Selection, Negotiation And Closing Assistance Services Associated With The Christie Sites For A Total Contract Amount Not To Exceed \$150,000

WHEREAS, the City of Emeryville owns three parcels located at 5890, 5900 and 6150 Christie Avenue (Assessor Parcel Numbers 49-1493-3, -4 and -5) totaling 2.01 acres (the “Christie Sites”); and

WHEREAS, the Christie Sites were acquired by the former Emeryville Redevelopment Agency using low and moderate-income housing funds; and

WHEREAS, on August 31, 2012 the California Department of Finance (“DOF”) approved the Christie Sites as a housing asset for transfer to the City as Housing Successor to the Emeryville Redevelopment Agency; and

WHEREAS, pursuant to California Health and Safety Code Section 33334.16, activities to develop the Christie Sites are required to commence within five years of the DOF’s approval of the Christie Sites as a housing asset, with this time period subject to a single, five-year extension if the City affirms, by resolution, its intent to use the Christie Sites for the development of affordable housing; and

WHEREAS, on July 25, 2017, the City Council adopted Resolution No. 17-130, which affirmed the City’s intent to use the Christie Sites for the development of affordable housing and extended the time period for initiation of development to September 1, 2022; and

WHEREAS, in September 2021, staff circulated a Request for Proposals for planning, environmental and financial feasibility analysis for development of the Christie Sites (the “RFP”); and

WHEREAS, one proposal was received from David Paul Rosen and Associates (“DRA”) by the RFP submittal deadline on October 27, 2021; and

WHEREAS, the proposal submitted by DRA recommended an alternative approach, which entails the development of a Request for Qualifications/Proposals (“RFQ/P”) for development of the Christie Sites; and

WHEREAS, the approach recommended by DRA is the most expedient pathway towards initiation of development of affordable housing on the Christie Sites; and

WHEREAS, the City requires assistance in preparing the RFQ/P, evaluating responses, negotiating business terms and agreements, and closing of the transaction; and

Resolution No. 22-03
DRA Christie Sites Contract
City Council Meeting | January 18, 2022
Page 2 of 3

WHEREAS, as evidenced by DRA's response to the RFP, DRA possesses the specialized knowledge, skills, and training necessary to render these services to the City; and

WHEREAS, the City desires to enter into a Professional Services Contract with DRA for the provision of developer selection, negotiation and closing services associated with the Christie Sites; and

WHEREAS, the public interest will be served by this Professional Services Contract; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Professional Services Contract with David Paul Rosen and Associates in substantial form as attached hereto as Exhibit A to provide developer selection, negotiation and closing services associated with the Christie Sites for a total contract amount not-to-exceed \$150,000; and be it further

RESOLVED, that the City Council hereby authorizes the City Manager to execute amendments to the Professional Services Contract with David Paul Rosen and Associates, as may be necessary to deliver developer selection, negotiation and closing services for the City, provided such amendments do not materially increase the City's financial obligations thereunder.

Resolution No. 22-03
DRA Christie Sites Contract
City Council Meeting | January 18, 2022
Page 3 of 3

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, January 18, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:
John Bauters
C7380B40E2C0458...
MAYOR

ATTEST:

DocuSigned by:
Sheri Hartz
FB7B5D8EAB6A4BE...
CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:
Andrea Visveshwara
962663BD5573404...
INTERIM CITY ATTORNEY

ATTACHMENTS

- Exhibit A – David Rosen Associates Professional Services Contract



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (“Contract”) is effective as of _____ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **DAVID PAUL ROSEN AND ASSOCIATES** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for Developer Selection, Negotiation and Closing Assistance for the Christie Avenue Sites; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

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

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

WHEREAS, the public interest will be served by this Contract; and

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

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 *Project Description*

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 *Services*

The services to be completed under this Contract (“Services”) are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

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

1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **DECEMBER 31, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 Additional Work Changes

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

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

3.2 Total Compensation Amount

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$150,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail

charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 *Assignment of Contract*

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

4.2 *Responsibility of Contractor and Indemnification of City*

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.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 Independent Contractor

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 Insurance

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

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect 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. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

4.6 *Conflicts of Interest*

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

4.7 *Confidentiality*

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 *Discrimination Prohibited*

The Contractor covenants and agrees that in performing the Services required under this Contract, the 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.

4.9 *Licenses, Certifications and Permits*

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 *Key Personnel*

The Project Manager is necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's

approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements

4.13.1 Compliance

At 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.

4.13.2 Applicability

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.

4.13.3 Non-Compliance

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.

4.13.4 Living Wage

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.

4.13.5 Minimum Wage and Paid Sick Leave

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.

4.14 California Labor Requirements

4.14.1 Prevailing Wage Requirements

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 Services are 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.

4.14.2 Registration

If the Services are 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 Services 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.

4.14.3 Labor Compliance Oversight

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 Services, 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.

4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

4.14.5 Event of Default

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. TERMINATION

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

6. 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.

7. ENTIRE AGREEMENT

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this 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.

11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 *Communications Relating to Daily Activities*

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Chadrick Smalley** for the City and **David Rosen** for the Contractor:

CITY	CONTRACTOR
Chadrick Smalley, Economic Development and Housing Manager Phone No: 510-596-4355 E-Mail : csmalley@emeryville.org	David Rosen, PhD, Principal Phone No: 510-451-2552 E-Mail : david@draconsultants.com

12.2 Official Notices

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

CITY	CONTRACTOR
Charlie Bryant, Community Development Director 1333 Park Ave. Emeryville, California 94608 Phone No: 510-596-4361 E-Mail : cbryant@emeryville.org <i>with a copy to:</i> Chadrick Smalley, Economic Development and Housing Manager 1333 Park Ave. Emeryville, California 94608 Phone No: 510-596-4355 E-Mail : csmalley@emeryville.org	David Rosen, PhD, Principal 3527 Mt. Diablo Blvd. Ste. 361 Lafayette, CA 94549 Phone No: 510-451-2552 E-Mail : david@draconsutants.com

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.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

17. WAIVER

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

18. OTHER REQUIREMENTS

Compliance with terms and conditions set forth in **Exhibit C** is ☐ **required** / ☒ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

SIGNATURES ON FOLLOWING PAGE

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

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

Approved As To Form:
DocuSigned by:
Andra Visveshwara as Interim
962663BD5573494...
City Attorney

Dated: CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated: DAVID PAUL ROSEN AND ASSOCIATES

DocuSigned by:
David Rosen
9EAEFB62378A471...
David Rosen, PhD (Signature)

!" !& #!##

Attach: W-9 Form	Attach: Business License Certificate
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EXHIBIT A
Scope of Services, Cost and Payment Schedule
Developer Selection, Negotiation and Closing Assistance
Christie Avenue Sites
David Paul Rosen & Associates (DRA)
City of Emeryville

SCOPE OF SERVICES

DRA will provide development advisory services to the City of Emeryville (City) to assist with developer selection, negotiation of agreements and transaction closing assistance for the Christie Avenue Sites (Christie Sites/Project).

Phase 1: Developer Selection

1.1 Preparation of Developer RFQ/P

DRA will assist the City in drafting an RFQ/P to select a Developer for the Christie Avenue Sites. DRA will:

1. Hold a kick-off Zoom meeting with City staff to review the scope and schedule and discuss issues related to the developer selection process and criteria. Upon email notice to proceed with the study from the City, DRA will submit a list of key documents/links to be provided by the City for DRA review in advance of the kick-off meeting. DRA will prepare an agenda for the call in advance of the meeting.
2. In conjunction with the City's development staff, City attorney and/or special legal counsel, review Redevelopment Law affordable housing requirements for the Christie Sites as a former redevelopment "housing asset". Such requirements may include, but may not be limited to, the percentage of units required to be affordable at specific income levels (defined as a percentage of Area Median Income).
3. In conjunction with the City's development staff, City attorney and/or special legal counsel, review implications, if any, for the Christie Sites of changes made by AB 1486 and AB 1255 to the Surplus Lands Act.
4. Consult with City staff to identify the City's goals and desires for the site, which may include:
 - a. Development program and mix of land uses;
 - b. Density;
 - c. Mix of owner and renter market-rate housing and affordable housing units;
 - d. Ground floor retail and/or other uses, as applicable;
 - e. Design parameters relating to the development's orientation to Christie Avenue Park and the entrance of the Public Market, easements, street reconfiguration, and other features desired by City staff, the Planning Commission and City Council.

5. Draft a Developer Request for Qualifications/Proposals (RFQ/P). The Draft RFQ/P is anticipated to include but not be limited to the following:
 - a. Background on the City of Emeryville (and availability of City affordable housing and/or brownfield remediation subsidy including any fee deferrals, waivers or other financial assistance to the Project);
 - b. Background on the Christie Sites:
 - i. Site description and zoning;
 - ii. Environmental assessments, remediation requirements and process for developing remediation cost estimates;
 - c. Development goals and requirements, including affordable housing requirements per State law;
 - d. Roles and responsibilities of the City and Developer/Development Team for all phases of predevelopment, construction and operation of the project;
 - e. Minimum qualifications for developers and other team members;
 - f. Submission requirements:
 - i. Required/desired team members (we would expect this RFQ/P to include developer and architect, with selection of environmental engineer, general contractor and/or rental housing property manager deferred to a later date);
 - ii. Team member qualifications (development experience and track record; 3 most recent year-end audited and year-to-date unaudited corporate financial statements for entit(ies) that will provide financial guarantees to lenders and investors; 3 most recent year-end financial audits for three comparable rental housing projects);
 - iii. Letters of interest from lenders and investors;
 - iv. Local business and resident hiring and prevailing wage requirements, as applicable;
 - v. Energy efficiency and/or net zero requirements;
 - vi. Community and stakeholder engagement during the design process;
 - vii. Resident services for affordable housing residents;
 - viii. Ownership and financing structure (including proposed financing plan, leveraged financing sources and financial pro forma). DRA recommends including rental and ownership housing and nonresidential financial pro forma templates as part of the RFQ/P to facilitate the analysis and comparison of the financing plans;
 - ix. Business offer of specified business terms which may include but are not limited to:
rental housing: maximum cash developer fee, general partner asset management fee, proposed distribution of residual receipts, process/formula for determining the ground lease payment to the City, nonrefundable cash deposit and others;
owner housing: rate of return formula and appraisal requirement for determining cash price to City for land and amount of any second

- mortgages for land value in favor of the City and/or a nonprofit entity, nonrefundable deposit and others;
- x. Schedule of performance;
- xi. Required certifications;
- xii. References (including investors, lenders, public agencies, community groups, general contractors, joint venture partners).
- g. RFQ/P selection process, selection criteria and schedule, including intention to negotiate an Exclusive Right to Negotiate Agreement (ERNA) and Lease Disposition and Development Agreement (LDDA); and
- h. Proposal submission process and review schedule.

Deliverables:

- 1) Preparation, Agenda and Kick-Off Meeting with Staff, plus Memo summarizing key decisions made at the Kick-Off Meeting.
- 2) Draft Outline for RFQ/P
- 3) Incorporate comments and produce Final Outline.
- 4) Draft Request for Qualifications/Proposals.
- 5) Incorporate City comments and produce Final Request for Qualifications/Proposals.

Task 1.2 Developer Proposal Evaluation and Due Diligence

DRA will conduct a comprehensive assessment of the proposals submitted in response to the RFQ/P. DRA will assist the City to conduct a two-stage review process that:

1. Compares and ranks the Proposers based on their qualifications, experience, track record and an initial review of their proposals to create a short list of up to three top candidates/proposals(Finalists) for further review; and
2. Conducts a detailed evaluation and scoring of the Finalists. DRA expects that City staff will take the lead in evaluating proposed design elements, and DRA will take the lead in examining the marketability, financial feasibility, reasonableness/competitiveness of assumed leveraged financing sources, and assessment of developer financial and staff development capacity, based on a review of submitted pro formas, financial statements reference interviews and candidate interviews.

DRA will work with staff to develop scoring criteria and rubrics for the initial ranking/selection of top candidates and for the ranking of the finalists.

Following the Closing Date for the RFQ/P, DRA will meet with staff to review the proposals received and determine the best way to prioritize contract resources for proposal review and due diligence.

DRA's proposal review and due diligence will include:

- a. A review and comparison of developer track record, experience and capacity (e.g. number of years in business, number of projects and units of comparable market rate and

affordable housing developments; Low Income Housing Tax Credit general partner and property management experience points; qualifications and commitment of key staff; project management staff capacity and workload);

- b. Evaluation of developers' ability to provide required lender and investor guarantees by analyzing corporate financial statements (total assets, unrestricted net worth, restricted and unrestricted cash, annual cash flow, indebtedness, assets and contingency liabilities), track record, letters of interest from lenders and investors, and reference checks;
- c. Detailed analysis of the financing plan including but not limited to the reasonableness of the construction budget, limited partner asset management fee, rents, operating costs, replacement reserves, cash flow, residual receipts sharing, Low Income Housing Tax Credit projected pricing and underwriting for all debt and equity, including the interest rate, terms and conditions;
- d. Evaluation of proposed business terms including but not limited to proposed cash developer fee, general partner asset management fee, residual receipts sharing, etc.;
- e. Evaluation of proposed leveraged financing sources; and
- f. Evaluation of staff capacity.

After DRA's detailed review of the Finalists' proposals is completed, DRA will hold a teleconference with staff to review summary materials on DRA's findings and questions raised by the review. DRA will collaborate with staff to draft specific questions raised by the proposals to be emailed to each Finalist. DRA will review Finalists' responses to questions with staff and determine if follow-up questions are warranted. Based on discussions with staff, the Finalists may be asked to and/or given a chance to modify their design, development program, affordable housing component business deal points, or other aspects of their proposal.

DRA will participate in Zoom interviews with each candidate, as determined appropriate to the selection process.

DRA will not provide services related to multi-family and/or single-family bond issuance or other municipal securities financial advisory services.

Deliverables:

- 1) Memo and matrix comparison of developer qualifications, experience and key characteristics of the proposal for the initial scoring of proposals and selection of finalists.
- 2) Memo and matrix comparison of financing plans for Finalists, including comparison of staff capacity, proposed business terms and evaluation of leveraged financing source for the Project and each of its phases as appropriate.
- 3) Review and discussion of comparison of recent project financial statements for selected comparable rental housing projects owned and operated by each Finalist including annual operating costs, net cash flow, annual deposits and balances of required operating and replacement reserves. (Typically, developers require corporate financial statements not be disclosed for public review.)
- 4) Memo summarizing reference interviews.
- 5) Scoring matrix.

6) Teleconferences/Zoom meetings with City staff to review all of the above

7) Attendance at Zoom meetings with the Planning Commission, City Council or other public bodies at the direction of City staff.

Phase 2: Developer Negotiations

DRA will assist the City in negotiating key agreements with the Developer, including a Term Sheet, ERNA and LDDA.

Task 2.1: Term Sheet

DRA recommends negotiating a term sheet based on the selected Developer's proposal that outlines key business terms, which may include:

1. Development program and mix of land uses;
2. Developer responsibility to pay predevelopment expenses and reimburse eligible expenses paid by the City including but not limited to development consulting and special counsel legal expense;
3. Responsibility for environmental remediation costs and proposed level of financing/subsidy to be provided by the City (or a process to determine the amount of financing/subsidy to be provided);
4. Maximum cash developer fee (for rental housing);
5. Residual receipts sharing and payment of deferred developer fee (for rental housing);
6. General partner asset management fee (for rental housing);
7. Property management fee(for rental housing);
8. Cash deposit;
9. Ground lease terms (for rental housing and/or nonresidential uses);
10. Land sales price or formula for determining land sales price (for non-residential commercial uses and for owner housing), including net cash paid at sale and any second mortgage(s) in favor of the City and/or a designated nonprofit;
11. City subsidy, including City development and/or permit fee waivers and/or deferrals, if any;
12. Responsibility for financial guarantees;
13. Anticipated financing sources;
14. Requirement to bid construction and permanent debt and equity;
15. Process for Financing Plan modifications;
16. Sharing of development cost savings;
17. City approval rights including approval of additional key development team members (i.e. architect if not specified in documents, engineer, general contractor, property manager), transfer/assignment, removal of GP, construction contract, key financing documents;
18. Resident services requirements;
19. Time of performance.

Task 2.2: ERNA

DRA will consult with City staff, City Attorney and/or the City's special legal counsel on the content of the ERNA, review the draft ERNA, review Developer comments on the ERNA, and assist in negotiating key deal points. DRA may also attend one or more meetings of the Planning Commission and/or City Council, if directed in writing by City staff. Complexity of negotiations with the developer at may require additional time to complete the ERNA.

Task 3: LDDA

DRA will assist the City and its special legal counsel in review and negotiation of the Lease Development and Disposition Agreement (LDDA), with a focus on key deal points and to ensure it contains key rights and protections for the City's investment of land and financial resources into the Project. In addition, DRA will assist in reviewing and negotiating a Financing Plan and Project Schedule to be included as attachments to the LDDA. DRA may also attend one or more meetings of the Planning Commission and/or City Council, if directed in writing by City staff.

Phase 3: Transaction Assistance And Closing Services

DRA will provide transaction assistance and closing services which may include:

- Review of pro formas in applications for leveraged financing sources;
- Review of changes to the Financing Plan;
- Advise on competitive bids for debt and equity financing commitments from private sector lenders and investors, along with selection and negotiation of commitment letters and financing term sheets;
- Review of loan agreements, ground leases, partnership agreements, regulatory agreements and other financing documents;
- Assist with other issues including but not limited to environmental remediation and community involvement; and
- Assist with issues raised by Project lenders, investors and creditors as needed for successful, timely closing.

Phasing and complexity of project financing and development issues will affect time required to complete closing assistance services.

COST AND PAYMENT SCHEDULE

DRA services will be provided on a time and expense basis using the Professional Fee and Expense Reimbursement Schedule in Attachment A. All services will be billed monthly. Budgets for each task are estimates, and costs may vary among tasks. DRA and staff will consult throughout the assignment to track costs by task. In no event will DRA’s costs exceed the Total Contract Limit without written amendment to the Contract approved by the City and DRA.

Phase/Task	Task Budget
<i>Phase 1: Developer Selection</i>	
Task 1.1 Preparation of Developer RFQ/P	\$20,000
Task 1.2 Developer Proposal Review and Due Diligence	\$40,000
<i>Phase 2: Developer Negotiations</i>	
Task 2.1 Term Sheet	\$8,000
Task 2.2 ERNA	\$12,000
Task 2.3 LDA	\$20,000
<i>Phase 3: Transaction and Closing Assistance</i>	\$50,000
<i>Contingency</i>	\$30,000
Total Contract Limit	\$150,000

INSURANCE REQUIREMENTS

Insurance shall be provided by DRA pursuant to Exhibit B. DRA does not own any vehicles; consultant maintains Hired and Non-Owned Auto Liability Insurance.

Attachments:

Attachment 1: DRA 2021-2022 Professional Fee and Expense Reimbursement Schedule.



DAVID PAUL ROSEN & ASSOCIATES
DEVELOPMENT, FINANCE AND POLICY ADVISORS

3527 Mt. Diablo Blvd., #361
Lafayette, California 94549
tel: 510.451.2552
fax: 510.451.2554
admin@draconsultants.com
www.draconsultants.com

Attachment 1
David Paul Rosen & Associates

2021-2022 Professional Fee and Expense
Reimbursement Schedule

Principal I	\$375
Principal II	\$345
Senior Associate	\$325
Associate	\$290
Research Associate I	\$260
Research Associate II	\$255
Data Entry, Word Processing, Administrative, Assistance and Accounting	\$125

The following costs are reimbursable expenses with supporting receipts:

- Mileage at the equivalent of the then current federal mileage reimbursement rate; tolls
- Round-trip coach airfare, as mutually agreed by client and consultant
- Ground expenses: rental cars, parking, cabs and other
- Meals and lodging
- Long-distance telephone charges, facsimile charges and expedited courier service
- Copying and production charges
- Data service charges
- Supplies, as required for deliverables.

A 1.75% per month surcharge will be added to any invoice that is unpaid 30 days after the original date of the invoice.



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **DAVID PAUL ROSEN AND ASSOCIATES**.

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

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**

\$1,000,000.00 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:

☒ **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.

☒ **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