

RESOLUTION NO. 22-04

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Professional Services Contract With PES Environmental Inc. To Provide Environmental Consulting Services Associated With The Christie Sites For A Total Contract Amount Not To Exceed \$100,000

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 recommended that the City directly engage with an environmental consultant to characterize and identify remediation alternatives and costs for 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

Resolution No. 22-04
PES Christie Sites Contract
City Council Meeting | January 18, 2022
Page 2 of 3

WHEREAS, environmental characterization and preliminary estimates of remediation costs are critical path items for the RFQ/P process; and

WHEREAS, in January 2019 the City circulated a Request for Qualifications (“RFQ”) for various consulting services, including environmental consulting; and

WHEREAS, ten submittals from environmental consulting firms were received in response to the RFQ; and

WHEREAS, staff evaluated submittals from environmental consultants and determined that eight of the ten submitting firms would be placed on the qualified consultants list, including PES Environmental, Inc. (“PES”); and

WHEREAS, PES’ submittal in response to the RFQ included a description of work successfully completed for the Marketplace Redevelopment Project, which is adjacent to the Christie Sites; and

WHEREAS, due to PES’ work at the Marketplace Redevelopment Project, PES is uniquely positioned to provide environmental consulting services to the City for the Christie Sites; and

WHEREAS, as evidenced by PES’ response to the RFQ, PES possesses the specialized knowledge, skills, and training necessary to render environmental consulting services to the City; and

WHEREAS, the City desires to enter into a Professional Services Contract with PES for the provision of environmental consulting 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 PES Environmental, Inc. in substantial form as attached hereto as Exhibit A to provide environmental consulting services associated with the Christie Sites for a total contract amount not-to-exceed \$100,000; and be it further

RESOLVED, that the City Council hereby authorizes the City Manager to execute amendments to the Professional Services Contract with PES Environmental, Inc. as may be necessary to deliver environmental consulting services for the City, provided such amendments do not materially increase the City’s financial obligations thereunder.

Resolution No. 22-04
PES 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

C7280B40E2C0458...

MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

EB7B5D8EAB6A48E...

CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andrea Visveshwara

962663BD5573494...

INTERIM CITY ATTORNEY

ATTACHMENTS

- Exhibit A – PES Environmental, Inc. 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 **PES ENVIRONMENTAL, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for Environmental Consulting Services for the Christie 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.

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.

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

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 THOUSAND DOLLARS AND NO CENTS (\$100,000.00)**, 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 **William Mast** for the Contractor:

CITY	CONTRACTOR
Chadrick Smalley, Economic Development and Housing Manager Phone No: 510-596-4355 E-Mail : csmalley@emeryville.org	William W. Mast, P.G. Phone No: 415-798-3032 E-Mail : will.mast@nv5.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	Keith O'Brien, Vice President 7665 Redwood Blvd. Ste. 200 Novato, CA 94945 Phone No: 415-798-3032 E-Mail : keith.obrien@nv5.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 Visureshwara as Interim
962663BD5573494...
City Attorney

Dated: CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated: PES ENVIRONMENTAL, INC.

DocuSigned by:
Keith O'Brien
0F3E20EC4CCE478...
Keith O'Brien, Vice President (Signature)

!" !" #!##

Attach: W-9 Form	Attach: Business License Certificate
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SCOPE OF WORK

The objectives of the proposed scope of work are to provide current data regarding subsurface conditions to facilitate cost models related to future redevelopment. Details are provided in the following sections.

Prior to conducting sampling activities, PES will perform a site inspection to evaluate site configuration and access, and select sampling locations. For the purposes of this proposal, it is assumed that drilling and sampling activities will take place in two consecutive events. The first sampling activity will consist of soil and groundwater sampling, and the second will consist of soil vapor sampling.

Task 1 - Field Preparation Activities

The following activities will be performed prior to the commencement of field sampling activities:

- Prepare a site-specific Health and Safety Plan for the sampling activities, in accordance with applicable occupational safety and health requirements;
- Obtain a drilling permit from the Alameda County Public Works Agency (assumes one permit for each assessor parcel [three total]);
- Procure subcontractors, equipment, and supplies needed to implement the scope of work discussed below; and
- Contact Underground Service Alert to schedule visits by public and private utility companies to locate their underground utilities. In addition, a private underground utility locating service will be contracted to conduct a subsurface electromagnetic survey to screen the proposed sampling locations for the presence of subsurface utilities.

Task 2 - Soil, Groundwater, and Soil Vapor Sampling and Laboratory Analyses

To assess conditions in soil, groundwater, and soil vapor, a truck- or track-mounted direct-push drill rig or roto hammer will be used to advance borings, as described in the following sections. The proposed boring locations are intended to: (1) provide sufficient soil data to facilitate pre-construction waste profiling that would allow for direct loading during of excess soil during excavation, to the extent practicable (i.e., saves time and space over stockpiling soil, then testing soil); and (2) provide an assessment of current soil, groundwater, and soil vapor concentrations across the subject property for the purpose of assessing potential health and safety risks to future construction workers and users of future buildings. Samples for laboratory analysis will be collected at 14 locations. Sampling locations will be selected based

on current site conditions and access restrictions, if any. PES will confirm proposed sample locations with the City prior to field preparation activities.

Borehole drilling and sampling services will be provided by a licensed contractor possessing a valid C-57 water well contractor's license issued by the State of California, and in accordance with California Department of Water Resource Water Well Standards (Bulletin 74-90). The field investigation will be conducted under the supervision of a California-registered geologist or engineer.

A PES geologist or engineer will observe the borehole drilling and will prepare a lithologic log of each boring using the Unified Soil Classification System. Soil samples will be field screened for VOCs using a photoionization detector (PID) equipped with a 10.6 electrovolt (eV) lamp, and the PID readings will be recorded on the lithologic log. Soil sampling depths and analyses may be modified based on the results of field screening, observations of changes in lithology, or visual or olfactory indications.

Filled sample containers will be labeled for identification and immediately placed in a chilled, thermally insulated cooler (containing either bagged ice or blue ice) until delivery under chain-of-custody protocol to the project laboratory. Each sample will be assigned a sample number that will be entered on the chain-of-custody form. The chain-of-custody form will accompany the sample shipment to the laboratory to document sample possession from the time of collection. The samples will be analyzed under a standard turnaround time.

To reduce the potential for cross-contamination between sampling locations, downhole drilling and sampling equipment will be thoroughly cleaned prior to initiating work and between sampling locations. Sampling equipment will be washed in a dilute Alconox (or equivalent) solution, rinsed with potable water, and final rinsed with distilled water between each sampling location. Direct-push drilling equipment will be decontaminated as necessary with a high-pressure hot water wash between sampling locations. Upon completion of sampling activities, each borehole will be grouted to the surface in accordance with Alameda County requirements.

Task 2A - Soil Sampling and Laboratory Analysis

The borings will be advanced to a depth of approximately 5 feet below ground surface (bgs). Soil matrix samples will be collected from continuous cores obtained from the borings. The continuous soil cores will be collected by driving a 4-foot long by 2-inch outside-diameter sampler into undisturbed soil. The sampler will be lined with one 4-foot long, clear acetate sample sleeve. Soil samples submitted for analysis by U.S. Environmental Protection Agency (USEPA) Method 8260B will be collected in accordance with USEPA Method 5035 using Terracore™ samplers. Soil samples will be collected at depths of approximately 2.0 and

4.5 feet bgs from all borings. As noted above, sample depths may be adjusted based on field screening observations, refusal and/or presence of groundwater.

Filled soil sample containers will be labeled for identification and immediately placed in a chilled, thermally insulated cooler (containing either bagged ice or blue ice) until delivery under chain-of-custody protocol to the project laboratory. Each sample will be assigned a sample number that will be entered on the chain-of-custody form. The chain-of-custody form will accompany the sample shipment to the laboratory to document sample possession from the time of collection.

The soil samples will be analyzed as follows: (1) total petroleum hydrocarbons quantified as gasoline (TPHg) by U.S. Environmental Protection Agency (U.S. EPA) Method 8015B; (2) total petroleum hydrocarbons quantified as diesel (TPHd) and motor oil (TPHmo) by U.S. EPA Method 8015B; (3) California Code of Regulations Title 22 list of 17 metals (Title 22 metals) using U.S. EPA Method 6010B/7471B; (4) volatile organic compounds (VOCs) using U.S. EPA Method 8260B; (5) semi-volatile organic compounds (SVOCs) using U.S. EPA Method 8270C (GC/MS); (6) polychlorinated biphenyls (PCBs) using U.S. EPA Method 8082; (7) organo-chlorine pesticides (OCP) using U.S. EPA Method 8081; (8) asbestos using CARB 435 (400 PT); and (9) moisture using U.S. EPA SW846. Based on the historical investigation soil data, for the purposes of this proposal it is further assumed that: 50 percent of the soil samples will be analyzed for Soluble Threshold Leaching Characteristic (STLC) lead; 33 percent analyzed for STLC chromium or copper; and 25 percent analyzed for Total Characteristic Leaching Procedure (TCLP) lead, in order to assess extractable concentrations for these metals. These data will facilitate evaluation of waste disposal scenarios; the extractable metals analyses will be performed only if the total lead concentration exceeds approximately 50 and 100 milligrams per kilogram (mg/kg), respectively. This sampling approach will result in the following sample totals:

- 28 samples – TPHg, TPHd, TPHmo, Title 22 metals, VOCs, SVOCs, PCBs, OCP, moisture;
- 14 samples – STLC lead;
- 9 samples – STLC chromium or copper; and
- 7 samples – TCLP lead.

The analytical program described above should meet the requirements of most waste disposal facilities for the soil within the sampled depths.

Task 2B - Groundwater Sampling and Laboratory Analysis

Groundwater sampling will also consist of 14 sampling locations and will be performed in conjunction with the soil sampling described above. During prior site investigations, the depth to groundwater was observed to be approximately 3 to 5 feet bgs. For the purposes of this investigation, it is assumed that the borings for groundwater sampling will be extended to a total depth of 8 feet bgs to facilitate sample collection. Once the desired depth is reached, approximately 5 feet of nominal 0.75-inch diameter polyvinyl chloride (PVC) well screen fitted with a filter sock, and up to 5 feet of nominal 0.75-inch diameter PVC blank casing will be lowered into the boring and the drill string removed. The depth of the screened interval will be selected such that it intersects the top of the saturated zone in the boring, as identified during drilling. Groundwater samples will be collected from inside the PVC casing using a small diameter stainless-steel or disposable polyethylene bailer. The grab groundwater sample will then be immediately decanted from the bailer into appropriate laboratory-supplied sample bottles, which will be slowly filled in a manner to minimize sample disturbance and potential headspace or air bubbles in the sample bottle.

Each of the grab groundwater samples will be analyzed for: (1) VOCs and TPHg by U.S. EPA Method 8260B; and (2) TPHd/mo by U.S. EPA Method 8015.

Task 2C - Handling, Storage, and Disposal of Investigation-Derived Waste

For the purposes of this proposed scope of work and for budget estimating, it is assumed that one 55-gallon drum of soil cuttings and one 55-gallon drum of decontamination fluid (i.e., the investigation-derived wastes, or IDW) will be generated. PES will provide assistance for proper and timely off-site disposal of the IDW (anticipated as non-hazardous waste for the purposes of this proposal). In the event that testing of the IDW indicates it is hazardous as defined by California or Federal hazardous waste criteria, then PES will inform you of any additional costs for proper management of the IDW. Such increased cost would be covered by Task 6, Contingency (see below).

Task 3 - Soil Vapor Sampling and Laboratory Analysis

Due to shallow groundwater at the site, passive soil vapor sampling has been identified as an appropriate sampling technology. Passive soil vapor sampling will be paired with and conducted adjacent to the 14 locations where groundwater sampling is planned. Adsorbent samplers (e.g., Beacon® samplers, or equivalent) will be utilized. The adsorbent samplers will be placed in the subsurface using a roto-hammer or equivalent, and the surface will be temporarily patched in accordance with the manufacturer's standard procedures. The samplers will be installed and deployed for a duration of approximately 7 to 14 days. After collection, the samplers will be analyzed by a stationary laboratory using VOCs and petroleum hydrocarbons (C4-C9 and C10-C15 ranges) U.S. EPA Method 8260C. This estimate assumes

a total of 16 passive soil samples (including two QA/QC samples) and 2 field days for a one-person crew to install and retrieve the sampler devices.

Task 4 Data Summary Report

Following completion of soil excavation and management activities, PES will prepare a Data Summary Report. The report will summarize the work that was performed and provide copies of waste manifest forms, laboratory reports, and chain-of-custody forms will be included. A draft of the report will be provided to the City for review. Upon your concurrence, PES will submit the report to the appropriate regulatory agency for review and approval. However, we understand that at this time no regulatory agency is currently providing oversight and the investigation activities will be conducted as self-directed.

Task 5 - General Consultation

PES will provide general environmental consultation to the City as needed to assist with data interpretation and development of additional sampling and analysis, if required. Additionally, services anticipated include preparation for and participation in telephone conference calls/virtual meetings, and discussions with regulatory agencies if entering into an oversight agreement with an agency is desired by the City.

Task 6 - Contingency

This task consists of an approximately 7 percent contingency on the overall budget to account for unanticipated costs incurred while implementing the scope of work described above, such as longer drilling times due to borehole refusal, collection and analysis of additional samples based on field observations, disposal of IDW as hazardous waste, etc.

FEE ESTIMATE AND SCHEDULE

PES will perform the above-referenced scope of work on a time and materials basis for the estimated fee of \$100,000. This estimate will not be exceeded unless there is a material change in scope and not without your prior authorization. A breakdown of the estimated fee is as follows:

Task 1 - Field Preparation Activities	\$ 7,700
Task 2 - Soil and Groundwater Sampling	59,500
Task 3 - Passive Soil Vapor Sampling	12,500
Task 4 - Data Summary Report	7,800

Task 5 - General Consultation	7,800
Task 6 - Contingency	<u>6,700</u>
ESTIMATED FEE	<u>\$100,000</u>

PES is prepared to begin the work described herein immediately following contract award and execution. A drilling permit application can be submitted to Alameda County during the first week with permit approval expected within two weeks thereafter. Phase II field investigation will be completed within approximately two weeks (depending on weather), with laboratory analysis of samples lasting another two to three weeks. A draft of the data summary report presenting the soil, groundwater, and soil vapor investigation methodology and tabulated results will be submitted for your review approximately four weeks following receipt of all analytical results. We will be available for phone calls or virtual meetings with you to discuss the investigation findings and recommendations at your convenience. PES maintains the insurance coverage at or above the limits specified in the City's document titled *EXHIBIT B, Contract Insurance Requirements*.



City of Emeryville

CALIFORNIA

EXHIBIT B

Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **PES ENVIRONMENTAL, INC..**

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**

\$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:

☒ **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