

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is effective as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **WEST COAST CODE CONSULTANTS, INC.** ("Consultant"), collectively referred to as the "Parties".

### **W I T N E S S E T H   T H A T :**

**WHEREAS**, the City desires to utilize consultant inspection services during construction of City Capital Improvement Projects, construction of public improvements by private development, and construction activities within the public right-of-way pursuant to an encroachment permit; 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 Agreement; and

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

**WHEREAS**, the Consultant desires to provide such services; and

**WHEREAS**, the public interest will be served by this Agreement;

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

### **I.     SCOPE OF SERVICES AND TERMINATION DATE**

#### **A.     Project Description**

Public works inspection services for City Capital Improvement Projects, as more particularly described in Exhibit A.

#### **B.     Services**

The services to be completed under this Agreement are:

As more particularly described in Exhibit A, attached hereto, Consultant shall perform inspection services: during construction of City Capital Improvement Projects; during construction of public improvements by private development; and during construction activities within the public right-of-way pursuant to an encroachment permit. Possible tasks to be assigned within the Scope of Services ("Task Assignments") are more particularly described in Exhibit B attached hereto. Provided, however, that City may in its sole discretion choose to assign Task Assignments associated with any, all, or none of the

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Contract #:		CIP #:	
Reso. #:		EPW #:	

Projects listed in Exhibit B to Consultant. City may in its sole discretion choose to assign to Consultant Task Assignments for projects which do not appear on Exhibit B. Further provided that City may assign Task Assignments and / or projects to third parties, regardless of whether those Task Assignments or projects are listed in Exhibit B.

**C. Schedule and Completion Date:**

The services to be provided by Consultant under this Agreement shall commence on July 1, 2017 and terminate on June 30, 2018.

**D. Option to Renew Contract**

At the sole discretion of the City, this Agreement may be extended for an additional one (1) year period through June 30, 2019. Contract renewals will allow for a cost of living increase equal to the lesser of 5% or the change in the San Francisco/Oakland/San Jose Consumer Price Index for the preceding twelve (12) month period ending March 31, 2016.

**II. WORK CHANGES**

- A.** The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.
- B.** Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.
- C.** The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section III.B below.

### III. COMPENSATION AND METHOD OF PAYMENT

- A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.
- B. The total amount paid under this Agreement as compensation for services performed and for costs incurred shall not, in any case, exceed **FIVE HUNDRED THOUSAND DOLLARS (\$500,000)** except as outlined in Section 2.C above. The amount of compensation for services performed shall be based on actual time and materials billed for the various Task Assignments associated with Projects assigned. One or more Task Assignments with no guaranteed amount or duration may be issued. All Task Assignments shall be authorized in writing by the City with an estimate of the number of hours to be spent on the Task. The compensation will be based upon the hourly rates identified in the WC3 Hourly Rate Schedule attached hereto as Exhibit C. Consultant shall be responsible for the cost and expense of all supplies, materials, telephone, telecommunication, facsimile transmission, postage, photocopying, laptop computer with wireless internet access, outside services, transportation, lodging, and meals needed to provide the services under this Agreement.

#### **IV COVENANTS OF CONSULTANT**

##### **A. Assignment of Agreement**

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

##### **B. Responsibility of Consultant and Indemnification of City**

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant 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 Consultant or subconsultants), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. 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 Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

##### **C. Independent Contractor**

The Consultant 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 Consultant 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 consultants, 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 Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

**D. Insurance**

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.
2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:
  - a. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
  - b. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
  - c. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.
3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:
- a. General Liability and Automobile Liability Coverage.
    - i. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.
    - ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
    - iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
    - iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
    - v. Coverage shall be provided on a ~~Apay on behalf~~@ basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
    - vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
    - vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

c. All Coverages

- i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

- 5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.
- 6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.
- 7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

**E. Records, Reports and Audits**

1. Records

- a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. 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 Agreement. 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 Agreement shall be clearly identified and readily accessible.

2. Reports and Information: Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

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 Agreement. The Consultant 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 Agreement.



**F. Conflicts of Interest**

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

**G. Confidentiality**

The Consultant 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 Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

**H. Discrimination Prohibited**

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

**I. Licenses, Certifications and Permits**

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant 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 Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

**J. Key Personnel**

Dennis McGowan and Marty Olson (“Consultant’s Public Works Inspectors”) are necessary for the successful prosecution of the work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant’s Project Managers or members of the project team without written approval of the City. Consultant recognizes that the composition of this team was instrumental in the City’s decision to award the work to Consultant 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 as determined by the City. Failure to comply with the provisions of this section shall constitute a material breach of Consultant’s obligations under this Agreement and shall be grounds for termination.

**K. Authority to Contract**

The Consultant 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 Consultant to the terms of this Agreement, if applicable.

**L. 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 Consultant (“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 Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant 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 Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

**M. Living Wage**

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City’s Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to

a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$15.27 per hour (as of July 1, 2017, subject to increase annually on July 1<sup>st</sup> 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.

**N. Labor Code / Prevailing Wages**

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes “public work” as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination (“Wage Determination”) made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to insure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

1. Hours of Labor: Eight hours labor constitutes a legal day’s work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.
2. Labor Non-Discrimination: Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status or sex of such persons, except as provided in section 12940 of the Government Code.
3. Prevailing Wages: Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the

Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained on-line at <http://www.dir.ca.gov>. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

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

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4. Payroll Records: Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- a. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

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

- b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable

hours at the principal office of Consultant on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  - iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- c. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
  - d. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
  - e. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.

- f. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

5. Workers' Compensation: Pursuant to the requirements of section 1860 of the California Labor Code, Consultant 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 Agreement, Consultant certifies the following:

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

6. Event of Default. Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

**V. TERMINATION**

- A.** The City shall have the right to terminate this Agreement 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 Consultant for services rendered and expenses incurred prior to the termination date.
- D.** Upon receipt of a termination notice the Consultant 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 Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E.** The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

**VI. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Consultant 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 Consultant or successor or on any obligation under the terms of this Agreement.

**VII. ENTIRE AGREEMENT**

This Agreement 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 Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

**VIII. SUCCESSORS AND ASSIGNS**

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.



**IX. APPLICABLE LAW AND ATTORNEY'S FEES**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, 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 filed pursuant to this Agreement shall be the Superior Court of the State of California for the County of Alameda or the United States District Court for the Northern District of California.

**X. SEVERABILITY**

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. 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 Agreement shall remain in full force and effect to the extent possible.

**XI. BUSINESS LICENSE**

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

**XII NOTICES**

**A. Communications Relating to Daily Activities**

All communications relating to the day to day activities of the work shall be exchanged between Michael Roberts for the City and Dennis McGowan for the Consultant.

**B. Official Notices**

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

<b>CITY</b> <b>Carolyn Lehr, City Manager</b> <b>City of Emeryville</b> <b>1333 Park Avenue</b> <b>Emeryville, California 94608</b> <b>Phone No. (510) 596-4300</b>	<b>CONSULTANT</b> <b>Giyan Senaratne</b> <b>West Coast Code Consultants, Inc</b> <b>2400 Camino Ramon, Suite #240</b> <b>San Ramon, CA 94583</b> <b>Phone No. 925-275-1700</b>
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**XIII. WAIVER OF AGREEMENT**

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

**IN WITNESS WHEREOF** the City and the Consultant have executed this Agreement which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved, as to form:



\_\_\_\_\_  
Michael Guina, City Attorney

**CITY OF EMERYVILLE**

Dated: \_\_\_\_\_, 20\_\_

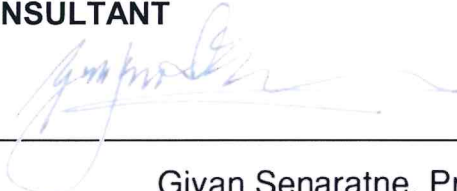
\_\_\_\_\_  
Carolyn Lehr, City Manager

**CONSULTANT**

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

  
Giyan Senaratne, Principal/ CEO

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

#### **A. Description of Required Services**

Construction inspection personnel are required in support of various CITY Public Works projects, private development, public improvement projects and miscellaneous encroachment permit construction projects within the City right-of-way. The CONSULTANT is to provide a qualified inspector to perform construction inspection services. The CONSULTANTS personnel will be assigned to the project during all hours of construction and/or as required by the CITY and will work under the direction of the CITY Project Manager.

Typical duties to be performed by the CONSULTANT personnel will include, but not be limited to, the following:

- 1) Performing construction inspection including insuring compliance with project plans and specifications, prepare/confirm monthly estimated pay quantities for individual Capital Improvement Projects .
- 2) Identify actual and potential problems associated with the construction project and recommend sound engineering solutions.
- 3) Maintain an awareness of safety and health requirements and enforcing applicable regulations and contract provisions for the protection of the public and project personnel.
- 4) Prepare a daily report for construction inspection activities for each on-going project using Caltrans format or using on-line format as directed by the City.
- 5) Assisting in the preparation of final as-built plans at the completion of construction.
- 6) Other duties as required.

#### **B. Personnel and Performance Requirements**

CONSULTANT personnel will remain available to the CITY on an on-call basis as requested by the CITY. Personnel assigned by the CONSULTANT to the Capital Improvement Projects shall be available beginning two (2) weeks before the start of the project to a maximum of six (6) weeks after acceptance by the CITY of the various construction projects. The miscellaneous on-call encroachment permit inspections and private development public improvement projects require the inspector to be available within 24 hour's notice and may only require 1 hour of inspection time for the call-out. CONSULTANT may be assigned multiple Task Assignments (as outlined in Exhibit B)

which are under construction simultaneously. At times, there will not be a full eight hours of billable time in a day.

CONSULTANT personnel assigned to perform public works inspections shall have the following minimum qualifications:

- 1) At least 10 years of relevant experience with infrastructure construction and private development construction including streets, sidewalks, ADA issues, sanitary sewers, storm drains, street trees, street light systems, irrigation systems, and underground utility districts.
- 2) At least two years of journey level public works inspection experience.
- 3) CONSULTANT personnel shall be required to successively complete a 40-hour health and safety course or an eight (8)-hour refresher course meeting the Federal Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 requirements and be on an annual medical monitoring program (29 CFR 1910.1001 through 1910.1045).

#### C. Deliverables

- 1) Daily Reports, extra work diaries, and materials testing reports shall be prepared daily to Caltrans Standards and shall be delivered to the CITY Project Manager weekly.
- 2) Documentation of contract progress payments and contract quantities shall be delivered to the CITY Project Manager no later than the last working day preceding the 20th of each month.
- 3) Documentation of final payment quantities shall be delivered to the CITY Project Manager by no later than (5) working days after acceptance by the CITY of the completed construction project.
- 4) All documentation of field measurements, test data and other documents as required by Caltrans procedures shall be recorded, maintained and submitted to the CITY project manager no later than (5) working days after acceptance by the CITY of the completed construction project.

All reports, calculations and other applicable documents shall be prepared on Caltrans standardized forms. Necessary forms will be provided to the CONSULTANT by the City Project Manager.

#### D. Equipment and Materials to be provided by the CONSULTANT

- 1) All necessary vehicles, instruments, tools and safety equipment required for its personnel to perform their work accurately, efficiently and safely.

2) Caltrans manuals and standards as listed in Section F, "Standards" below and forms and other policies and procedures to be followed by the Contractor's personnel in the performance of the work.

E. Materials to be provided by the CITY

The CITY will provide the CONSULTANT with the following:

- 1) Approved project plans and special provisions for the projects.
- 2) Approved encroachment permits for miscellaneous on-call encroachment permit construction and private development construction.

F. Standards

1) Construction inspection, materials sampling and testing, and contract administration shall be in accordance with current Caltrans Construction Manual and its revisions, the Bridge Construction Records and Procedures Manual, the Manual of Tests(3 Volumes), the Manual of Traffic Controls for Construction and Maintenance Work Zones, the Caltrans Standard Specifications and Standard Plans, and the project plans and special provisions.

G. Work to be performed by the CITY

The CITY will furnish a representative to perform the usual functions of a resident engineer and project manager.

H. Project Progress

To ensure an understanding of contract objectives, meeting between the CITY project manager and the CONSULTANT will be held as often as necessary. All work objectives, the work schedules, the terms of the contract and any other related issues will be discussed and any problems resolved. Monthly progress reports will be submitted by the CONSULTANT to the CITY project manager.

## EXHIBIT “B”

The following is a list of some of the projects that may be considered for assignments under the contract:

<b>Projects that may be considered for Assigned Task</b>	<b>Engineer's Estimate</b>
Street Rehab Program 2017/18	\$ 490,000
Sanitary Sewer Rehabilitation Program 2017/2018	\$ 300,000
Greenway Improvements, Stanford to Powell St.	\$ 700,000
Marina Park and Powell Street Lighting	\$ 1,050,000
Lumec Streetlight LED Retrofit and Painting	\$ 2,025,000
Powell Street Bridge Seal Coat	\$ 500,000
Temescal Creek Bridge Seal Coat	\$ 25,000
Traffic Signal, Harlan and 40 <sup>th</sup> Street	\$ 300,000
Traffic Signal, Powell and Doyle Street	\$ 300,000
Private Development Public Improvements and Private C3 Installations	
3800 San Pablo Residential	
Transit Center and Heritage Sq. Garage	
Market Place Redevelopment	
Parcel C	
Parcel D	
New Public Streets (62 <sup>nd</sup> , 63 <sup>rd</sup> ,	
Miscellaneous on-call Encroachment Permit Construction	\$ 100,000
EBMUD Reclaimed Water and Domestic Water Pipeline Replacements	
PG&E Gas Main on Hollis Street	
Private Sewer Laterals	\$ 250,000
Total Construction Project Value	\$ 6,040,000
(Excluding Private Development Public Improvements and Public Utilities)	

Other Capital Improvement Projects tasks may be assigned as directed by the City Engineer so long as there is sufficient budget in the contract to accommodate all the assigned tasks.

## Exhibit “C”

### WC<sup>3</sup> Hourly Rate Schedule – City of Emeryville

Please note: The project engineer will estimate the hours for the job.

<b><u>Personnel Description</u></b>	<b><u>Hourly Billing Rate</u></b>
Principal ~ Mr. Giyan Senaratne	\$ 140.00
Clerical Support ~	\$ 50.00
Senior Public Works Inspector ~ Mr. Dennis McGowan ~ Mr. John Vails ~ Mr. Eric Schneiderjohn ~ Mr. Andrew Wallace	\$ 142.25

These rates are effective through June 30th, 2018.

Overtime will be charged at 150% of the standard hourly rates. No overtime will be charged without prior authorization by client. \*\*

Outside Consultants - Cost plus 15%

\*\* Hours for in-house services and inspections in excess of 8 hours (per day) will be billed at the overtime rate shown above. When in-house services or inspection overtime is requested on weekends or holidays, these overtime services will be provided in 4-hour minimum segments.

#### **Billing Procedures**

At the beginning of each month, West Coast Code Consultants, Inc. (WC<sup>3</sup>) will furnish to the City of Emeryville an invoice and a statement of the work performed for compensation during the preceding month. Such statement will also include a detailed record of the month's actual reimbursable expenditures.

