

AGREEMENT

This Contract is made and entered into this _____ day of _____ 2018, between **CITY OF EMERYVILLE**, a municipal corporation ("City") and _____ ("Contractor");

WITNESSETH:

WHEREAS, by Resolution No. CD _____, the City Council of the City of Emeryville gave permission to advertise for the **2017/2018 STREET REHABILITATION AND PREVENTIVE MAINTENANCE PROJECT, PHASE 1** ("EPW 17-104"); and

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

WHEREAS, DeSilva Gates Construction of Dublin, CA submitted the lowest responsible bid in the amount of **\$1,634,568.00** and

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

WHEREAS, by Resolution No. _____, the City Council of the City of Emeryville approved the award of this agreement.

NOW, THEREFORE, the parties mutually agree as follows:

1. Contract Documents

The following documents are by this reference incorporated in and made a part of this Agreement: the State of California Department of Transportation Standard Plans and Standard Specifications dated 2006, the Part A General Provisions, the Part B General Provisions, the Part C Special Provisions for Project No. EPW 17-104, the Project Plans (Contract Drawings) for Project No. EPW 17-104, all addenda to the above plans and specifications, the Standard Plans and Specifications for Public Works Construction including Amendment A, the Notice to Contractors, Contractor's Bid and Proposal, and all required bonds. These documents are referred to herein as the "Plans and Specifications".

2. Scope of Work

In conformance with the Contract Documents, Contractor will furnish, all labor, materials, equipment, incidentals, transportation and disposal for services required in order to perform and complete the **2017/2018 STREET REHABILITATION AND PREVENTIVE MAINTENANCE PROJECT, PHASE 1** ("EPW 17-104").

FOR CITY USE ONLY			
Contract #:		CIP #:	
Reso. #:		EPW #:	

3. Price

The total amount to be paid under this Contract for all of the work set forth in Section 2 above is **One Million Six Hundred Thirty Four Thousand Five Hundred and Sixty Eight Dollars (\$1,634,568.00)** ("Total Contract Price"). This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

4. Time for Completion

After the Contract has been executed by City, Contractor shall begin work within 7 calendar days after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **forty (40) working days** from the effective date of the Notice to Proceed.

5. Liquidated Damages

The Contractor shall pay to the City of Emeryville the sum of **\$400 per day**, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

6. Blank

7. Contract Bonds

Attention is directed to Section 3-1.02 "Bonds" of the Part B General Provisions. Contractor shall provide bonds issued by a sufficient and admitted surety insurer authorized to do business in the State of California, and shall be maintained at the expense of Contractor. With the submission of any of these bonds, Contractor shall provide a current certificate from the Alameda County Clerk's Office indicating that the surety is a sufficient and admitted insurer.

- a. Performance Bond.
Before beginning the work, Contractor shall submit a Performance Bond to City for one hundred percent (100%) of the Total Contract Price and shall guarantee the faithful performance of the Contract.
- b. Payment Bond.
Before beginning the work, Contractor shall submit a Payment Bond to City if the Contract Price exceeds \$25,000, as required by Division Third, Part 4, Title 15, Chapter 7, of the Civil Code of the State of California. The Payment Bond shall be for one hundred percent (100%) of the Total Contract Price. Any alteration or alterations made in the Plans and Specifications which are a part of this Contract or in any provision of this Contract shall not operate to release any surety from liability on any required bond and the consent to make such alterations is hereby given. Any surety on such bonds hereby waives the provisions of Section 2819 of the Civil Code.

8. Responsibility for Damage

Contractor shall be responsible for any loss or damage that may happen to the work; for any loss or damage to any of the materials of other things used or employed in performing the work; for injury to or death of any person (including but not limited to workers or the public) from any cause whatsoever; or damage to property from any cause whatsoever.

Contractor shall indemnify, defend and save harmless City, and its officials, officers, employees, volunteers and agents against all suits, claims or losses (including attorneys' fees and expenses) that may be based on any injury or damage to, or death of any person or any damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Contract by Contractor, its subcontractors or employees, whether or not it shall be claimed that the injury was caused through a negligent act or omission of Contractor, its subcontractors, employees or other agents, except for the active negligence, sole negligence or willful misconduct of City. Contractor shall, at its own expense, pay all charges of attorneys and all cost and other expenses arising or incurred in connection with such suits, claims or losses. If any judgment shall be rendered against City in connection with any such suit, claim or loss, Contractor shall at its own expense satisfy and discharge it.

9. Insurance

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property of the work hereunder by Contractor, his agents, representatives, employees.

- a. Minimum Scope and Limits of Insurance. Coverage shall be placed with insurers admitted in California with a current A.M. Best's rating of not less than A: VII:
 - (1) Contractor shall maintain general liability insurance with limits no less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of at least \$2,000,000. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - (2) Contractor shall maintain automobile liability insurance with limits of no less than \$2,000,000 per accident for bodily injury and property damage.
 - (3) Workers' Compensation limits as required by the Labor Code of the State of California, and Employers Liability limits of no less than \$2,000,000 per accident.
 - (4) (blank)

- (5) Builder's Risk property insurance in the amount of the Contract Price on a replacement cost basis. Contractor shall not be obligated to obtain insurance coverage for "Acts of God" as defined in Public Contract Code section 7105 for tsunamis and earthquakes measuring over 3.5 on the Richter Scale. Moreover, Contractor shall not be held liable for any damage caused by "Acts of God" as defined in Public Contract Code section 7105.

b. Other Insurance Provisions.

- (1) As to the general liability, automobile liability and builder's risk property insurance policies, the City of Emeryville and its officers, officials, employees, agents and volunteers are to be covered as additional insured pursuant to an endorsement to the policy. The coverage shall contain no special limitations on the scope of protection afforded to the City of Emeryville, its officers, officials, employees, agents or volunteers.
- (2) For any claims related to this project, Contractor's insurance coverage shall be endorsed to be primary insurance as respects the City of Emeryville, and its officers, officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City of Emeryville, and its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- (3) For worker's compensation coverage, the insurer agrees by endorsement to waive all rights of subrogation against the City of Emeryville, and its officials, employees, and volunteers for losses arising from the work.
- (4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Emeryville, its officers, officials, employees, agents or volunteers.
- (5) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.
- (6) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the City.
- (7) Any deductibles or self-insured retentions must be declared to and approved by the City.

- (8) Contractor affirms and agrees that the referenced policies will not include a limitation that the self-insured retention or deductible may only be paid or exhausted by the named insured thereby restricting an additional insured from paying/exhausting the self-insured retention or deductible and realizing the benefit of the additional insured status.

10. Payment of Taxes

The Contract prices paid for the work shall include full compensation for all taxes which Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt Contractor from payment of any tax will be furnished to Contractor by City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract. Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether State or Federal, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

To the extent reasonably feasible, Contractor will use sales tax reporting procedures which will provide City of Emeryville the greatest benefit from California sales/use tax revenue. Such procedures may include, when applicable, designating City of Emeryville as the point of sale/use of product where there is no clearly determinable point of sale/use, self-reporting tax on out of state purchases of goods used in City of Emeryville and reporting City of Emeryville as the origin of construction costs as allowed by the State Board of Equalization pursuant to their December 1994, Resolution pertaining to allocation of local tax by construction contractors. Notwithstanding the above, Contractor shall not be obligated to adopt any procedures pursuant to this section if such procedures result in significantly increased costs to Contractor (including loss of profits or risk of liability for taxes in multiple jurisdictions), or if such procedures are contrary to the sales and use tax laws or regulations of California or any other state.

11. Permits and Licenses

Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Contract. Contractor shall comply with all permits applicable to the work. Contractor has and shall maintain the appropriate State Contractor's License, pursuant to Chapter 9 of Division 3 of the California Business and Professions Code.

Contractor has and shall maintain a current Business License with City of Emeryville during the term of this contract. Contractor shall insert in each of its subcontract Contracts a provision which requires its subcontractors to present proof that the subcontractor has obtained a current Business License with City of Emeryville during

the term of this contract.

The California Environmental Quality Act (Public Resources Code, Section 21000 to 21176) may be applicable to permits, licenses and other authorizations which Contractor must obtain from State or local agencies in connection with performing the work of the Contract. Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the work.

12. Labor Code Requirements

Contractor's attention is directed to Section 7-1.01A "Labor Code Requirements" of the Standard Specifications:

13. Living Wage

If this Agreement provides for compensation to Contractor 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.

Contractor 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 \$15.20 per hour (as of July 1, 2017, 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.

14. Antitrust Claims

Contractor's attention is directed to the following provision of Public Contract Code Section 7103.5(b) which shall be applicable to Contractor and his subcontractors:

"In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the awarding body all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties."

15. Warranty

Contractor warrants that all materials and work furnished (1) shall meet all requirements and conditions of City's Contract and manufacturer's warranty if any; (2) shall be free from defects in design, material; workmanship and methods of installation; and (3) shall be fit for the purposes intended. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and nonconforming. This warranty by the Contract is in addition to any warranties or guarantees required or provided by the manufacturer or supplier.

If within one (1) year after the date of final acceptance of the work by City, any of the work is found not in compliance with this section, Contractor shall correct the work at its own expense promptly after written notice from City to do so and pay for any damage to other property resulting from such nonconforming work. If Contractor fails to do so promptly, or in an emergency when delay could cause risk of damage or loss, then City may take whatever actions are necessary to have the nonconforming work removed, replaced or corrected at the expense of Contractor and to recover its damages, costs and expenses, including withholding the amount from any payment that is due or to commencing an action against the performance bond. Nonconforming work that is remedied under this section shall be subject to an extended warranty obligation for the period of two (2) years after the nonconformity has been remedied.

Nothing in this section shall be construed to establish a period of limitation with respect to other obligations that Contractor may have under these Contract Documents.

16. Independent Contractor Status

Contractor shall independently perform all work under this Contract and shall not be considered an agent or employee of City; nor shall Contractor's subcontractors or

employees be considered as subagents of the Owner.

17. Hazardous Chemicals and Wastes

Should any release, discharge, leakage, spillage, emission or pollution of any hazardous chemicals or wastes occur due to Contractor's work, then Contractor at its sole cost, shall clean all affected property to the satisfaction of City and any governmental body with jurisdiction. Contractor shall immediately report any such release to the Director of Public Works.

If the performance of the work outlined by these Contract Documents creates any hazardous wastes, Contractor shall properly dispose of such wastes in full accordance with federal, state and local laws, at its expense. Contractor shall provide City with written proof of its or its subcontractor's registration as a hazardous waste transporter.

18. Conflicts of Interest

Contractor covenants and declares that other than this Contract, it has no holdings or interests within the City of Emeryville or business holdings or agreements with any official, employee or representative of City and shall disclose any such holdings or interests to City in writing.

19. Discrimination Prohibited

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

20. No Waiver

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

21. No Personal Liability

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

22. Entire Agreement

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

23. Authority to Contract

Contractor covenants and declares that it has obtained all necessary approvals to bind Contractor to this Contract and that the representative signing the Contract is authorized to do so.

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

CITY OF EMERYVILLE

Carolyn Lehr, City Manager

Approved as to form:



City Attorney

Contractor: _____

Address: _____

Tel.: _____

FAX No: _____

Email Address: _____

SIGN HERE >>>

by: _____

its: _____