

# **CITY OF EMERYVILLE**

## **REQUEST FOR PROPOSALS**

### **BANKING SERVICES**

**PROPOSAL DUE DATE: JUNE 2, 2017 NOON PST**

**REP INFORMATION**

Title: Banking Services  
Contact: Susan Hsieh, Finance Director  
Phone: 510-596-4352  
Email: shsieh@emeryville.org

**ANTICIPATED TIMELINE FOR SUBMISSION AND EVALUATION**

May 10, 2017 Release of Request for Proposals  
June 2, 2017 Proposals due by Noon  
June 5 to 30, 2017 Evaluation of Proposals\*  
July 20, 2017 Award of Contract

*\* Banks may be requested to interview with staff during this period*

**SUBMISSION INSTRUCTIONS**

Submit Proposals To: Susan Hsieh  
Finance Director  
City of Emeryville  
1333 Park Avenue  
Emeryville CA 94608-3517

Format: Submit three (3) printed copies including one (1) signed original.  
Also submit one (1) electronic (pdf) copy via email.

Deadline: June 2, 2017 at Noon

## **Section A**

### **DESCRIPTION OF WORK**

#### **I. INTRODUCTION**

The City of Emeryville (City) is seeking proposals from qualified financial institutions to provide comprehensive banking services for its bank accounts and related depository and cash management operations. The financial institution must be an FDIC Insured depository and in good standing among other comparable banks. It must be Federally or chartered by the State of California to provide a variety of commercial banking services. Incorporated under the laws of the State of California or of the United States with an office/deposit location within the City limits or in close proximity.

#### **II. BACKGROUND**

The City was originally founded in 1896 under the laws of the State of California as a general law city. On November 4, 2014 the voters of Emeryville voted for the City to become a Charter City. The City operates under the City Council-City Manager form of government. Under this form of government, the Emeryville City Council is the legislative body responsible for setting city policy and adopting the city budget. The City Manager is the administrative head of the city government and is responsible for policy implementation and management of city operations. The City manager advises and makes recommendations to the City Council concerning any conditions or situations which require council direction or policy determination and prepares the recommended budget for consideration and approval by the City Council. The City provides the following services: police, fire (through the Alameda County Fire Department), public works, development services (economic development, housing, planning and building), community services (child development, youth and adult services) and general administrative services.

The City currently maintains a primary banking relationship with one depository institution, including one checking account for the City and one checking account for the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency. The City's checking account includes lockbox services. The City has determined that a review of the services offered by qualifying institutions is appropriate at this time. It is the City's preference to maintain all commercial banking services with one financial institution to maximize cash flow and minimize administrative costs. The City's banking activities are overseen by the Finance Director.

This RFP does not cover institutional custody services or corporate trust services.

The City will endeavor to administer the proposal process in accordance with the terms and dates outlined in this RFP. However, the City reserves the right to modify the activities, timeline, or any other aspect of the process at any time, as deemed necessary. By requesting proposals, the City is in no way obligated to award a contract or pay the expenses of proposing banks in connection with the preparation or submission of a proposal. The award of any contract shall be contingent on the requisite staff's and City Council's approvals. Determination of best value to the City shall be based upon, but not limited to, the following considerations: cost; the ability, capacity, and skill of the proposer to provide the services; the ability of the provider to deliver timely services; the character, integrity, reputation, judgment, experience, and efficiency of the provider; and the quality of the provider's performance on previous contracts with the City. No single factor will determine the final award decision. The City reserves the right to reject all proposals. All proposals are subject to the California Public Records Act.

### **III. SCOPE OF SERVICES**

- A. Establish accounts to meet the banking requirements of the City.
- B. Disburse funds via repetitive wire transfers or ACH upon either telephone or online request of an authorized person.
- C. Accept and send ACH transactions and provide online notification of ACH deposits within 24 hours.
- D. Process direct deposit of employee payroll semi-monthly. Approximately 185 City employees receive their payroll via direct deposit.
- E. Provide credit card merchant services.
- F. Provide lockbox services.
- G. Provide positive pay services.
- H. Provide fraud prevention services.
- I. Accept deposits at branch locations or local depositories.
- J. Provide deposit slips, deposit bags, and coin wrappers free of charge to the City's Finance Department.
- K. Process State of California Local Agency Investment Fund transfers and receive electronic funds payments for deposit of other State and county apportionments.
- L. Provide automated account reconciliation reporting services for City accounts. Available information should include, but not be limited to: closing ledgers, closing collected, opening ledgers, opening collected, float, previous day debit, and credit details (including bankcard deposits, sweep transfers, and ACH credit and debit detail).
- M. Provide online access to account information including daily activity reports, monthly statements, cleared checks, and automated stop payment.
- N. Provide monthly activity and account analysis statements and reports for all accounts. The statement cutoff should be the last day of the month. Statements must be sent no later than the 10th of the following month.
- O. Provide a quarterly review of the City's account balances and opportunities to improve the City's cash management, to be held at the City Offices.
- P. If your institution provides courier/cash pickup services, please provide the quote. This is not a required service.

## **IV. QUALIFYING REQUIREMENTS**

- A. Be a federally or State of California chartered financial institution.
- B. Be a member of the Federal Reserve System and have access to all services.
- C. Be a qualified depository for public funds.
- D. Be a full service bank in good standing among other comparable banks.
- E. Be capable of providing the services sought by the City.
- F. Have an established office within the City limits or in close proximity.
- G. Agree to assign experienced and dedicated staffs who are committed to and capable of servicing our accounts.
- H. Be in compliance and good standing with the Community Reinvestment Act.
- I. Be sufficiently capitalized to accommodate our cash/investment management needs.
- J. Demonstration of being a good financial institution that is fair and honest in its dealings (reputation and social responsibility)

## **V. REQUIRED INFORMATION**

Interested proposers must provide a proposal containing the following information to the City to be considered a viable candidate for this contract:

### **A. Financial Institution Profile**

- 1. Provide a general overview of your financial institution, customer service philosophy, corporate organization, and identification of the primary office or branch that the City will be assigned to and where the City will conduct its banking business.
- 2. Describe the financial institution's experience in providing similar services for other public clients. Please include the number of public agency clients, the dollar amount of public funds on deposit, and your financial institution's knowledge of and adherence to the California Government Code and other applicable laws.

### **B. Staffing**

Provide resumes of financial institution officers who will be directly involved in the management of the City account; who the primary contact will be; and what, if any, experience these officers have in working with public clients.

### **C. Banking Services**

- 1. Describe the financial institution's ability and approach to provide the banking services described in Section III, Scope of Services, above and to what extent, if any, the service is automated.
- 2. Describe how interest will be calculated and credited on all accounts. Be specific.

3. What is the ledger cutoff time for deposits at the financial institution's local branch and at the financial institution's Processing Center?
4. Describe in detail the financial institution's procedures for handling deposit adjustments. What documentation on discrepancies does the financial institution provide? Is the documentation different for cash deposits and check deposits? What is the minimum adjustment amount? How soon would support documentation of a deposit discrepancy be provided to the City?
5. Describe the financial institution's returned item handling and notification procedures. Is an automatic re-clearing option available? How long does it take for returned items to be sent to the City?
6. Describe the financial institution's stop payment service and features. Can stop payments be entered online? How long is a stop payment effective?
7. Provide a copy of the availability schedule that would apply to deposits into the City accounts.
8. List the address of all branch offices in the City's vicinity.
9. Provide a list of the financial institution's holidays.
10. Describe how the financial institution will collateralize the City deposits.
11. Provide a detailed description of the controls in place to insure the integrity of the funds transfer system.
12. Describe the types of insurance and bonding carried.
13. Describe any services and technological enhancements not previously mentioned that should be considered for further improving the effectiveness of the City's treasury management operations.
14. Will the financial institution guarantee payment of all items even if it results in the account being overdrawn temporarily for the day?
15. Does the financial institution have the ability to confirm the clearing status of a check as an online service? If not, by phone?
16. Describe how to receive copies of paid items. How long does it take to obtain a copy of a paid check? Is this service available online?
17. Does the financial institution offer a CD-ROM and online imaging service? If so, please describe the service, the costs associated with this service and how long images are available online.
18. The City transacts State of California Local Agency Investment Fund (LAIF) transfers on a regular basis and receives electronic funds payments for deposit of various State and county apportionments.
  - Is the financial institution an approved State of California depository?

- What is the charge per transfer to LAIF? From LAIF?
  - Please describe the LAIF transfer process. Are the transfers done by telephone, terminal (ACH), fax, wire transfer, etc.?
  - Does the financial institution have an office in Sacramento that maintains a direct DDA banking relationship with the State Treasurer's Office and the State Controller's Office?
19. Direct Deposit of Payroll is currently in place, with the majority of the City's employees participating. The payroll files are transmitted by the City for paydays that occur on the 5<sup>th</sup> and 20<sup>th</sup> of each month, except on holidays and weekends.
- Please describe the financial institution's ACH and Direct Deposit service in detail.
  - What are the different ACH file transmission options available to the City?
  - What are the transmission deadlines for Direct Deposit ACH files? When (day and time) does the financial institution need the file from the City, and when specifically are funds debited from the City's account?
  - Please describe in detail the financial institution's back-up plans for data transmissions. The City requires immediate notification of any changes or problems and the ability to re-send a file or to delete a file.
  - What screening measures does the financial institution use to minimize errors on files sent to you i.e., pre-notes, ABA screening, etc.?
20. The City currently accepts Visa, MasterCard and Discover credit card payments, but the transactions are not processed by our current bank. Please provide pricing information associated with credit card services.
- Please describe the financial institution's Bankcard and Point-of-Sale processing capabilities.
  - What authorization methods do you support and which do you recommend?
  - Please quote a discount rate and all other applicable charges for the credit card processing described above. Quote rates for both swiped and non-swiped transactions.
  - What are the fees associated with debit card transactions?
  - How is the applicable interchange fee determined for each transaction? What does the financial institution recommend to minimize interchange fees?
  - When and how are the discount rate and other fees charged to the City? Can these fees be paid through account analysis? If the fees can be paid through account analysis, please describe how they are calculated and when they are charged.

- Describe your reporting methodology and how adjustments and charge backs are handled. Are charge backs and other debit adjustments netted from daily proceeds or debited separately? Is the discount fee refunded when a charge back or refund occurs? What is the rebuttal process?
  - When and how will the City receive funds for each day's transactions? Is settlement by ACH or Fed Wire? Are settlement amounts listed separately on the bank statement or will they appear as one lump sum? Will the financial institution break out settlement amounts by merchant location?
  - Is the bankcard relationship managed by a separate unit of the financial institution, or by the Account Relationship Manager? Please briefly describe the structure of this area.
  - What are the hardware costs if new terminals are required?
21. The City requires assurance of ability to provide financial services in the event of a major emergency and during the disaster recovery period.
- Describe in detail, the bank's compliance with state and federal regulations pertaining to this area.
  - Describe testing of core service applications and systems that assure information backup, anti-intrusion and other privacy requirements.
  - Describe operational diversification and geographical dispersal of service centers.
22. Provide copies of Depository and Service Agreements required to be executed under this contract for services rendered (including collateral agreements). Any changes or modifications required on any of these documents, agreements or forms will be discussed, reviewed by the City Attorney and mutually agreed upon before award of the contract is made by the City.
23. Describe the frequency and format of reports that you would provide to the City and include sample reports and records.
24. Provide the proposed prices for the list of basic banking services on the Requested Services Pricing worksheet included in Section E. Itemize any other charges that would apply to these accounts.
25. Does the City have the option of compensating your bank on either a fee or balance basis? Is the price the same for either option? If not, what is the difference? If on a fee basis, can excess balances be used to partially offset activity charges?
26. Please describe the procedures used to make an adjustment to bank statements and to assure a corresponding adjustment to account analysis statement. How is the adjustment handled if the analysis period has already ended?
27. How is your earnings credit determined, adjusted and applied? Please include in your explanation the impact of your reserve requirement, your formula for converting service charges to balance requirements, and a listing of your earning credits and reserve requirements. Are these calculated quarterly or annually?



28. Describe the bank's policies concerning daylight overdrafts and what, if any, impact these policies may have on the management of the City's accounts.
29. There are services not otherwise identified in the City's RFP Scope of Services (Section III) that the proposer may offer to the City. Proposals are not required to address any additional services in order to be considered an acceptable proposal. However, final selection of the successful proposer may be based on the desirability and cost of the additional services offered.
30. Describe a conversion plan to transfer assets of the City to your financial institution.
31. What lead-time do you expect will be necessary before the conversion begins?
32. Describe your plans for educating and training the City employees in the use of your systems and for providing support after implementation.

## Section B

### GENERAL TERMS AND CONDITIONS

#### PROPOSAL REQUIREMENTS

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal (proposer) shall meet all of the terms, and conditions of the Request for Proposals (RFP) specifications package. By virtue of its proposal submittal, the proposer acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. **Proposal Submittal.** Each proposal must be submitted on the form(s) provided in the specifications and accompanied by any other required submittals or supplemental materials. Proposal documents shall be enclosed in an envelope that shall be sealed- and addressed to Susan Hsieh, Finance Director, City of Emeryville, 1333 Park Avenue, CA, 94608-3517. In order to guard against premature opening, the proposal should be clearly labeled with the proposal title, name of proposer, and date and time of proposal opening. No FAX submittals will be accepted.
3. **Insurance Certificate.** Each proposal must include a certificate of insurance showing:
  - a. The insurance carrier and its A.M. Best rating.
  - b. Scope of coverage and limits.
  - c. Deductibles and self-insured retention.

The purpose of this submittal is to generally assess the adequacy of the bidder's insurance coverage during proposal evaluation; as discussed under paragraph 11 below, endorsements are not required until contract award. The City's insurance requirements are stated in detail in the City's Professional Service Agreement in Section D.

4. **Proposal Quotes and Unit Price Extensions.** The extensions of unit prices for the quantities indicated and the lump sum prices quoted by the proposer must be entered in figures in the spaces provided on the Proposal Submittal Form(s). Any lump sum proposal shall be stated in figures. The Proposal Submittal Form(s) must be totally completed. If the unit price and the total amount stated by any proposer for any item are not in agreement, the unit price alone will be considered as representing the bidder's intention and the proposal total will be corrected to conform to the specified unit price.
5. **Proposal Withdrawal and Opening.** A proposer may withdraw its proposal, without prejudice prior to the time specified for the proposal opening, by submitting a written request to the Finance Director for its withdrawal, in which event the proposal will be returned to the proposer. No proposal received after the time specified or at any place other than that stated in the "Notice to Proposers" will be considered.
6. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested in more than one proposal, except an alternative proposal when specifically requested; however, an individual or business entity that has submitted a sub-proposal to a proposer submitting a proposal, or who has quoted prices on materials to such bidder, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other proposers submitting proposals.

7. **Communications.** All timely requests for information submitted in writing via e-mail ([shsieh@emeryville.org](mailto:shsieh@emeryville.org)) will receive a written response from the City. Telephone communications with City staff are not encouraged and any such oral communication shall not be binding on the City.

## **CONTRACT AWARD AND EXECUTION**

8. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "special terms and conditions" in Section C of these specifications for proposal evaluation and contract award criteria.
9. **Competency and Responsibility of Bidder.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of proposers. Proposers will provide, in a timely manner, all information that the City deems necessary to make such a decision.
10. **Contract Requirement.** The proposer to whom award is made (Contractor) shall execute a written contract with the City within ten (15) calendar days after notice of the award has been sent by mail to it at the address given in its proposal. The contract shall be made in the form adopted by the City and incorporated in these specifications. A copy of the City's professional services agreement is included as Attachment A to this RFP. Any requested deviations to the attached standard Professional Services Agreement must be set forth in the proposal. Otherwise, proposer shall be deemed to have accepted all terms of the Agreement.
11. **Insurance Requirements.** The Contractor shall provide proof of insurance in the form, coverages and amounts specified in Section D of these specifications within 15 (fifteen) calendar days after notice of contract award as a precondition to contract execution.
12. **Business License and Tax.** The Contractor must have a valid City of Emeryville business license and tax certificate before execution of the contract. Additional information regarding the City's business license and tax program may be obtained by calling (510) 596-4325.

## **CONTRACT PERFORMANCE**

13. **Ability to Perform.** The financial institution warrants that it possesses all licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.
14. **Laws to be Observed.** The financial institution shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of Emeryville ordinances, regulations, and adopted codes during its performance of the work.

## Section C

### SPECIAL TERMS AND CONDITIONS

1. **Contract Term.** The term of the contract shall be for a period of three years at which time the performance of the bank will be evaluated. Upon mutual agreement at that time, the City Manager or their designee may extend the contract.
2. **Chartered Institution/Branch Office in City.** Proposers must be a federally or State of California chartered institution and must maintain a full-service branch within the limits of the City of Emeryville or in close proximity during the term of the contract.
3. **Commencement of Banking Services.** The successful proposer shall begin providing the full scope of services no later than September 30, 2017.
4. **Proposal Content.** Your proposal submission package must include the following information:

#### *Submittal Forms*

These are provided in Section E:

- a. Proposal submittal summary
- b. References from four companies (preferably government agencies) for whom you have provided similar services and a list of any clients where similar services were provided who terminated services in the last three years prior to the end of the service agreement.
- c. Statement of past contract disqualifications or terminations for 10 years.
- d. Required services pricing schedule

*Note: For ease of preparation, proposers may recreate these forms electronically as long as the same information is provided in a similar format.*

#### *Supplemental Attachments*

To be an acceptable proposal, all of the above documents must be included with the submittal, along with responses to the *Required Information* set forth in Section A.

In addition, the following attachments may be required:

- e. If the prospective banking institution is proposing alternatives or non-substantial deviations to the Banking Services, a full description and justification for the proposed alternative or deviation must be included with the proposal.

- f. If the prospective banking institution is proposing an alternative method for pricing of banking services, a full description of the alternative must be included with the proposal along with computation detail.
- g. We encourage you to be creative and educational in your responses. Include information about the bank's community involvement and the dedicated resources for serving the public sector. While your format must be consistent with the requirements of this RFP, if you believe there is additional information that would be beneficial to us, we invite you to include it in your proposal.

#### **Proposal Length and Copies**

- h. Proposals should not exceed 25 pages, including attachments and supplemental materials. Proposals should be on 8 1/2x11 inch paper, minimum 11 point font and top/bottom margins of at least 0.5 inches and left/right margins of at least 1.0 inches.
- i. Three copies of the proposal must be submitted (one signed).

5. **Proposal Evaluation and Selection.** Proposals will be evaluated by a review committee based on the following criteria:

- a. Understanding of the work required by the City.
- b. Quality, clarity and responsiveness of the proposal.
- c. Demonstrated competence and professional qualifications necessary for successfully performing the work required by the City.
- d. Recent experience in successfully performing similar services.
- e. Ability to provide evolving technologies, products and services.
- f. Reliability and quality of customer service.
- g. Financial strength and capitalization.
- h. Commitment to the government market.
- i. Proposed approach in completing the work.
- j. Reputation and social responsibility (i.e. policies/practices that promote socially responsible investing)

k. References.

l. Background and related experience of the specific individuals to be assigned to this project.

m. Proposed compensation.

As reflected above, contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the City. After evaluating the proposals and discussing them further with the finalists or the tentatively selected contractor, the City reserves the right to further negotiate the proposed work and/or method and amount of compensation.

6. **Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by the banking institution as part of the work or services under these specifications shall be the property of City.
7. **Copies of Reports and Information.** If the City requests additional copies of reports, or any other material in addition to what the banking institution is required to furnish in limited quantities as part of the work or services under these specifications, the banking institution shall provide such additional copies as are requested, and City shall compensate the banking institution for the costs of duplicating of such copies at the banking institution's direct expense.
8. **Non-Exclusive Contract.** The City reserves the right to contract with other banking institutions during the contract term.
9. **Right to Reject All Proposals.** The City reserves the right to reject all proposals.
10. **Public Records.** All proposals are subject to the California Public Records Act.

**Section D**  
**FORM OF AGREEMENT**

(See Attached Professional Services Agreement Template)

## Section E

### PROPOSAL SUBMITTAL SUMMARY

The undersigned declares that she or he:

- Has carefully examined the Request for Proposal, which is hereby made a part of this proposal.
- Is thoroughly familiar with its contents.
- Is authorized to represent the proposing firm.
- Agrees to perform the work as set forth in this proposal.
- Certifies this proposal meets or exceeds all of the requirements Request for Proposal, except as otherwise indicated and supported by supplemental schedules or attachments included with this proposal.
- Certificate of insurance attached; insurance company's A.M. Best rating:\_\_\_\_\_.

#### *Firm Name and Address*

<i>Contact</i>	<i>Phone</i>

Corresponding Bank (if applicable):\_\_\_\_\_

#### *Local Branch Address*

<i>Branch Manager</i>	<i>Phone</i>

#### *Signature of Authorized Representative*

<i>Date</i>
-------------

The undersigned declares that they have carefully examined the Request for Proposal, which is hereby made a part of this proposal; is thoroughly familiar with its contents; is authorized to represent the proposing firm; and agrees to perform the specified work for the following cost quoted in full.



## REFERENCES

Number of years engaged in providing the services included within the scope of the specifications under the present business name:\_\_\_\_\_.

Describe fully the banking services provided to five government agencies performed by your financial institution which demonstrate your ability to provide the services included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

### Reference No. 1

Customer Name	
Contact Individual	
Telephone	
E-mail Address	
Street Address	
City, State, Zip Code	

### Reference No. 2

Customer Name	
Contact Individual	
Telephone	
E-mail Address	
Street Address	
City, State, Zip Code	

### Reference No. 3

Customer Name	
Contact Individual	
Telephone	
E-mail Address	
Street Address	
City, State, Zip Code	

### Reference No. 4

Customer Name	
Contact Individual	
Telephone	
E-mail Address	
Street Address	
City, State, Zip Code	

Additionally, attach a listing of any clients where similar services were provided who terminated services in the last three years prior to the end of the service agreement.

## REQUIRED SERVICES PRICING SCHEDULE

Please complete all items on the forms attached to this section. (1) If your financial institution does not or cannot provide a specific requested service, please indicate “no proposal” and if appropriate recommend an alternate service and include as a specified attachment. (2) If the service is contracted to a third-party, please mark this clearly.

In addition to submitting proposal responses, the attached forms **must also** be completed:

**(See Attached Forms)**



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES AGREEMENT

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **[CONSULTANT NAME]** ("Consultant"), collectively referred to as the "Parties."

### WITNESSETH THAT

**WHEREAS**, the City desires to **[PROJECT DESCRIPTION]**; 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; 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 described in **["SCOPE OF WORK" / "PROPOSAL"]**, attached as Exhibit A.

#### 1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

#### 1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on **[COMMENCEMENT DATE]** and terminate on **[TERMINATION / END DATE]**.

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

## **2. WORK CHANGES**

### **2.1 City Rights to Change**

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.

### **2.2 Additional Work Changes**

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.

### **2.3 City Manager Execution**

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 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

## **3. COMPENSATION AND METHOD OF PAYMENT**

### **3.1 Compensation for Services Performed**

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.

### **3.2 Total Compensation Amount**

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed

**[FORTY-FIVE THOUSAND] DOLLARS AND NO CENTS (\$45,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be **computed based upon an hourly rate of \$50.00 [OR] 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 CONSULTANT**

##### **4.1 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.

##### **4.2 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 as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant 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 consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating 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.

### **4.3 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.

### **4.4 Insurance**

#### **4.4.1 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.

#### **4.4.2 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. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. 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.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

\_\_\_\_\_ (Consultant's Initials)

#### 4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

#### 4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. 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 Consultant 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, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. 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.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.

4. 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.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. 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.
7. 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

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.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 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.



#### 4.4.7 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.

#### 4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

### 4.5 Records, Reports and Audits

#### 4.5.1 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.

#### 4.5.2 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.

#### 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 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.

#### **4.6 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.

#### **4.7 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.

#### **4.8 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, gender identity, marital status, national origin or ancestry, age or disability.

#### **4.9 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.

#### **4.10 Key Personnel**

[PROJECT MANAGER] OR All of the individuals listed in Exhibit A [is / are] necessary for the successful prosecution of the work due to [his / her / their] unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. 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. 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.

#### **4.11 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.

#### **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 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.

#### **4.13 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 regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, 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.

#### **4.14 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 ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

##### **4.14.1 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.

##### **4.14.2 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, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

#### 4.14.3 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 online at [www.dir.ca.gov](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.

#### 4.14.4 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.

- 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:
  - 1. 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.
  - 2. 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.
  - 3. 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.

#### 4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

#### 4.14.6 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."

#### 4.14.7 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.

**5. 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.

**6. 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.

**7. 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.

**8. 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.



**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 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 taken pursuant to this Agreement 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 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.

**11. 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.

**12. NOTICES**

**12.1 Communications Relating to Daily Activities**

All communications relating to the day-to-day activities of the work shall be exchanged between **[PROJECT MANAGER]** for the City and **[CONSULTANT NAME]** for the Consultant.

## 12.2 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:

### CITY

#### [PROJECT MANAGER]

1333 Park Avenue  
Emeryville, California 94608  
Phone No.: (510) 000-0000  
Fax No.: (510) 000-0000  
E-Mail: E-MAIL@emeryville.org

### CONSULTANT

#### [CONSULTANT NAME]

[ADDRESS]  
Phone No.: (000) 000-0000  
Fax No.: (000) 000-0000  
E-Mail: [E-MAIL ADDRESS]

## 13. 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 A. Guina, City Attorney

### CITY OF EMERYVILLE

Dated: \_\_\_\_\_, 2017

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

### CONSULTANT

Dated: \_\_\_\_\_, 2017

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**CITY OF EMERYVILLE**  
**SUMMARY OF SERVICE TRANSACTIONS**

<b><u>SERVICE DESCRIPTION</u></b>	<b><u>ANNUAL VOLUME</u></b>	<b><u>UNIT PRICE</u></b>
<b><u>GENERAL ACCOUNT SERVICES</u></b>		
ACCOUNT MAINTENANCE-CHEXSTOR	12	_____
DEBITS POSTED	420	_____
CLIENT ANALYSIS STATEMENT-PAPER	12	_____
BANK CONFIRMATION AUDIT REQUEST	1	_____
<b><u>LOCKBOX SERVICES</u></b>		
WLBX REMIT PROCESSED EXPR MAIL	38	_____
WLBX PO BOX ANNUAL RENTAL	1	_____
WLBX STANDARD ITEM PROCESSED	1,900	_____
WLBX ROUGH SORT 5 OR LESS	1,900	_____
WLBX DOCUMENT REASSOCIATION	153	_____
WLBX CHECK IMAGE/PHOTOCOPY	1,328	_____
WLBX PAPER RETURN	6,531	_____
WLBX NON-TRUNCATE PKG PREP MO BASE	4	_____
WLBX DOCUMENT SCANNED	10,740	_____
WLBX MONTHLY BASE	12	_____
WLBX MICR DATA CAPTURE PER LINE	1,900	_____
WLBX VALUE ADDED KEYING	57,443	_____
WLBX DAILY DEPOSIT CUT	183	_____
LOCKBOX CEO SUBSCRIPTION MTHLY BASE	12	_____
WLBX CD ROM	12	_____
WLBX CD ROM PER IMAGE	6,911	_____
WLBX PKG US MAIL DELIVERY	291	_____
WLBX CORRESPONDENCE / REJECTS	45	_____
WLBX 1 YR B/W IMAGE ARCHIVE	10,740	_____

**CITY OF EMERYVILLE**  
**SUMMARY OF SERVICE TRANSACTIONS**

<b><u>SERVICE DESCRIPTION</u></b>	<b><u>ANNUAL VOLUME</u></b>	<b><u>UNIT PRICE</u></b>
<b><u>DEPOSITORY SERVICES</u></b>		
BRANCH/STORE/NIGHT DROP DEPOSIT	512	_____
CASH DEPOSITED IN BRANCH/STORE	189,508	_____
MISCELLANEOUS CREDITS POSTED	334	_____
DEPOSITED CHECKS - ON US	1,244	_____
WHOLESALE LBX CHECKS DEPOSITED	1,900	_____
ROLLED COIN ORDERED IN BRANCH/STORE	3	_____
CASH ORDERED IN BRANCH/STORE	260	_____
PER CHANG ORDER FEE IN BRANCH/STORE	2	_____
DEPOSITED CHECKS	4,055	_____
RETURN ITEM - CHARGEBACK	21	_____
RETURN ITEM REDEPOSITED	6	_____
<b><u>PAPER DISBURSEMENT SERVICES</u></b>		
POSITIVE PAY MONTHLY BASE	12	_____
DDA CHECKS PAID	3,975	_____
PAYEE VALIDATION STANDARD-ITEM	3,975	_____
POSITIVE PAY EXCEPTION CHECKS RETND	5	_____
POS PAY CHECKS WITH NO ISSUE RECORD	1	_____
CEO SEARCH	13	_____
STOP PAYMENT - ONLINE	9	_____
WF CHK CASHED FOR NONACCT HOLDER	64	_____
OFFICIAL BANK CHECK	6	_____
<b><u>PAPER DISBURSEMENT RECON SERVICES</u></b>		
ARP MONTHLY BASE - FULL	12	_____
OUTGOING TRANSMISSION - PER ITEM	4,023	_____
ARP FULL RECON-ITEM (MONTHLY)	4,077	_____
ARP OUTPUT - TRANSMISSION	12	_____
CEO ARP STMT & RPTS MONTHLY BASE	2	_____
ARP OPTIONAL REPORTS	12	_____
ARP PAPER STMT/REPORT MONTHLY BASE	12	_____
ARP PAPER STATEMENT/REPORT DELIVERY	12	_____
POSITIVE PAY EXCEPTIONS - ITEM	410	_____
ARP AGED ISSUE RECORDS ON FILE-ITEM	621	_____

**CITY OF EMERYVILLE**  
**SUMMARY OF SERVICE TRANSACTIONS**

<b><u>SERVICE DESCRIPTION</u></b>	<b><u>ANNUAL VOLUME</u></b>	<b><u>UNIT PRICE</u></b>
<b><u>GENERAL ACH SERVICES</u></b>		
ACH MONTHLY BASE	24	_____
ACH TWO DAY ITEM	611	_____
ACH ONE DAY ITEM	4,763	_____
ACH SAME DAY	4	_____
ELECTRONIC CREDITS POSTED	420	_____
ACH RECEIVED ITEM	643	_____
ACH RETURN ADMIN -MANUAL	5	_____
ACH TRANSMISSION CHARGE	50	_____
ACH FAX SERVICE	10	_____
<b><u>WIRE &amp; OTHER FUNDS TRANSFER SERVICE</u></b>		
WIRE OUT DOMESTIC - CEO	136	_____
WIRE OUT DOMESTIC - BRANCH	9	_____
WIRE IN - DOMESTIC	28	_____
WIRE MONTHLY DDA BASE - VOICE	12	_____
WIRE TEMPLATE STORAGE MONTHLY BASE	36	_____
WIRE SECURITY PIN MONTHLY BASE	36	_____
<b><u>INFORMATION SERVICES</u></b>		
CEO PREV DAY SUBSCRIPTION MTHLYBASE	24	_____
CEO PREVIOUS DAY ITEM LOADED	5,307	_____
ARP STMTS & RPTS (CSV/EXCEL) BASE	2	_____
ARP STMTS & RPTS (CSV/EXCEL) / ITEM	1,047	_____
<b><u>OTHER SERVICES</u></b>		
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____

**CITY OF EMERYVILLE AS SUCCESS AGENCY  
TO THE EMERYVILLE REDEVELOPMENT AGENCY**

**SUMMARY OF SERVICE TRANSACTIONS**

<b><u>SERVICE DESCRIPTION</u></b>	<b><u>ANNUAL VOLUME</u></b>	<b><u>UNIT PRICE</u></b>
<b><u>GENERAL ACCOUNT SERVICES</u></b>		
ACCOUNT MAINTENANCE-CHEXSTOR	12	
DEBITS POSTED	8	
DDA STATEMENT - PAPER	9	
CLIENT ANALYSIS STATEMENT-PAPER	12	
<b><u>DEPOSITORY SERVICES</u></b>		
BRANCH/STORE/NIGHT DROP DEPOSIT	33	
DEPOSITED CHECKS - ON US	7	
DEPOSITED CHECKS	31	
<b><u>PAPER DISBURSEMENT SERVICES</u></b>		
POSITIVE PAY ONLY MONTHLY BASE	12	
DDA CHECKS PAID	43	
POSITIVE PAY ONLY - ITEM	43	
POSITIVE PAY EXCEPTION - CEO IMAGE	397	
CEO REGISTER INPUT - ITEM	4,170	
<b><u>GENERAL ACH SERVICES</u></b>		
ELECTRONIC CREDITS POSTED	9	
ACH RECEIVED ITEM	12	
<b><u>WIRE &amp; OTHER FUNDS TRANSFER SERVICE</u></b>		
WIRE OUT DOMESTIC - CEO	2	
WIRE BOOK TRANSFER - CEO	4	
WIRE OUT DOMESTIC - BRANCH	2	
WIRE IN - DOMESTIC	9	
<b><u>OTHER SERVICES</u></b>		