

## RESOLUTION NO. 19-98

### **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Maintenance Contract With Rubicon Enterprises Inc., dba Rubicon Landscape In An Amount Not To Exceed \$200,400 For City-Wide Landscape Maintenance For Fiscal Year 2019-2020**

**WHEREAS**, the City of Emeryville contracts for the maintenance of designated City owned parks and open space; and

**WHEREAS**, the City periodically releases a Request for Proposals (RFP) for Landscaping Maintenance Services, the last one being May of 2017, which granted the City Manager authority to enter into an annually renewable contract through FY 2021-2022; and

**WHEREAS**, on June 20, 2017, the City Manager entered into a maintenance contract with Rubicon Landscaping Inc. in an amount not to exceed \$209,536 for landscape maintenance of designated city-owned parks and open space; and

**WHEREAS**, the Proposed Agreement for Fiscal Year 2019-2020 conforms to the RFP provisions that allow for the City to enter into additional annual contracts through Fiscal Year 2021-2022, providing the Contractor with a cost of living adjustment based on the Bay Area Consumer Price Index, to a maximum of 5% per year; and

**WHEREAS**, the contract contingency in Fiscal Year 2019-2020 has been reduced from \$40,000 to \$14,175; and


**WHEREAS**, there are sufficient funds are available in the operating budget to cover the cost of this landscape maintenance contract; now, therefore, be it

**RESOLVED**, by the City Council of the City of Emeryville that the City Manager is authorized to enter into a Maintenance Contract, with Rubicon Landscaping Inc. in an amount not to exceed \$200,400 for landscape maintenance of city-owned parks and open space for fiscal year 2019/20.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 9, 2019, by the following vote:

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

ATTEST:

  
CITY CLERK

  
MAYOR

APPROVED AS TO FORM:

  
CITY ATTORNEY



**MAINTENANCE SERVICES CONTRACT**

**THIS MAINTENANCE SERVICES CONTRACT** ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, ("Effective Date") by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **RUBICON ENTERPRISES, INC DBA RUBICON LANDSCAPE**, ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

**WITNESSETH THAT**

**WHEREAS**, Contractor submitted a proposal for designated services in connection with the FY 2017/2018 Citywide Landscape Maintenance Proposal, Project EPW 17-108, and

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

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

**1. AWARD OF CONTRACT**

**1.1 Contract Documents**

The Contract Documents shall include this Contract, including all exhibits attached hereto, and any Plans and Specifications, Notice to Contractors, Contractor's Proposal, Addenda and Change Orders. In the event of any conflict between the printed provisions of this Contract and those of Contractor's offer of acceptance, the provision of this Contract shall prevail.

**1.2 Scope of Work**

In conformance with the Contract Documents, Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship and disposal required in order to provide the maintenance services ("Work") as described in **Exhibit A**, attached hereto. Any quantities for work are estimates. The City does not guarantee any level of work under this Contract. The City, in its discretion, reserves the right to hire or contract with others to do the work set forth in the Contract.

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

### 1.3 Price

- A. The Contractor shall be compensated for Work in accordance with the lump sum and rates set forth in **Exhibit A**. The specified compensation will stay in effect for the duration of this Contract. Should the Contractor fail to perform the Work in accordance with the Contract, a corresponding deduction in any recurring amounts owed under **Exhibit A** will be made by the City.
- B. Overtime rates for extra work, if any, shall be charged only on weekdays from 4:30 p.m. to 8:00 a.m., Saturdays, Sundays, and all national holidays. Overtime shall be charged only for the actual time spent at the work site in fifteen (15) minute intervals as approved in advance in writing by the City.
- C. The total amount to be paid under this Contract shall not exceed the sum of **TWO HUNDRED TWENTY-SIX THOUSAND TWO HUNDRED AND TWENTY-FIVE DOLLARS AND NO CENTS (\$226,225.00)** ("Total Compensation"). An allowance in an amount not to exceed **FIFTY FIVE THOUSAND DOLLARS AND NO CENTS (\$55,000.00)** is included in the Total Compensation for extra work as described in **Exhibit A** should it be needed. The Contractor shall not perform any extra work unless approved in writing by the City Public Works Director.

### 1.4 Payment

Contractor shall invoice City not more frequently than once a month for the Work performed. Compensation shall be paid to Contractor upon receipt and approval by City of invoices setting forth in detail the Work performed. City shall pay Contractor within forty-five (45) days after approval of the invoice by City staff.

### 1.5 Term

This Contract shall begin on the Effective Date and shall terminate on **JUNE 30, 2020**.

### 1.6 Annual Compensation Adjustment

This Contract ☒ is / ☐ is not awarded pursuant to a request for qualifications or proposals, seeking a multi-year contract. If this Contract is awarded pursuant to a request for qualifications or proposals, the Contractor may increase its rates at a percentage no greater than the percent increase in the March to March San Francisco/Oakland Metropolitan Area Consumer Price Index as released by the United States Department of Labor on a yearly basis with a maximum inflation increase of 5% per year, upon written notice to the City at least sixty (60) days in advance of the new rates taking effect.

## 2. PROSECUTION OF WORK

### 2.1 *Change Orders*

City may, without notice to any sureties, and without invalidating the Contract, at any time: a) make alterations, deviations, additions to or deletions from the Contract Documents; b) increase or decrease the quantity of any item or portion of the Work; c) delete any item or portion of the Work; or d) require extra work, as determined by City to be necessary or advisable. All such Work shall be performed under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. Any such changes in the Work will be set forth in a written change order issued by City ("Change Order").

The Change Order will specify:

- A. The Work to be done in connection with the change to be made;
- B. The amount of the adjustment of the lump sum and rates set forth in **Exhibit A** and Total Compensation, if any, and the basis for compensation for the Work ordered; and
- C. The extent of the adjustment in the time specified for performance of Work, if any.

A Change Order shall not become effective until it has been signed by the Director of Public Works. Upon receipt of an approved Change Order, Contractor shall promptly proceed with the ordered Work, unless otherwise provided in the approved Change Order.

No changes or deviations from the Contract Documents shall be made without the authority of an approved Change Order, except that in cases of emergency the Director of Public Works may direct a change in writing. A Change Order increasing the Total Compensation under the Contract requires a written amendment to the Contract.

Whenever it appears to Contractor that a change is necessary, Contractor shall immediately notify the Director of Public Works of the change it believes necessary and the reasons for such change; however, work in the area affected shall not be discontinued unless ordered by the Director of Public Works.

### 2.2 *Public Convenience*

Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public and it shall have under construction no greater length or amount of Work than it can prosecute properly with due regard to the rights of the public. Maintenance operations shall be conducted in such a manner as to cause as little inconvenience as possible to owners of abutting property. Convenient access to driveways, houses and buildings along the line of work shall be maintained, and



temporary approaches to roads or highways shall be provided and kept in good condition.

### **2.3 Safety Requirements**

Contractor shall comply with all safety requirements prescribed by applicable federal, state and local laws and regulations to ensure the safety and health of those working and the local community. Contractor shall assume all responsibility for public safety during the prosecution of the work and all such costs shall be included in the Contract price. Whenever Contractor's operations create a condition hazardous to traffic or to the public, it shall furnish, erect and maintain, at its expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

### **2.4 Inspection**

All authorized representatives of City shall have access to the Work. Work and materials not meeting the requirements of City shall be corrected, and unsuitable Work or material may be rejected. Failure on City's part to reject nonconforming Work shall not be construed to imply acceptance of such Work. Observation by City of the Work shall not relieve Contractor of its responsibility to conduct its own comprehensive inspections of the Work and to furnish materials and perform work in accordance with the Contract Documents.

### **2.5 Termination**

#### **2.5.1 Termination for Cause**

City shall have the right to terminate Contractor's right to proceed with some or all of the Work and may terminate this Contract for default by providing written notice thereof at least five (5) calendar days in advance of the termination date. The term "default" includes, but is not limited to: a) performance of Work in violation of the terms of the Contract or other applicable law, order, regulation, permit or requirement; b) abandonment; c) assignment or subletting without City approval; d) bankruptcy or appointment of a receiver for Contractor's property; e) refusal or failure to properly prosecute the Work; f) use of materials, supplies, plant or equipment of improper quality or quantity; g) refusal or failure to use an adequate number of properly skilled workers; h) failure to provide proper workmanship; i) failure to take effective steps to end a labor dispute; j) performance of this Contract in bad faith or k) failure to pay subcontractors. Upon such termination, City shall have the right to complete the Work, or the portion involved, by whatever means and methods it deems expedient, at the Contractor's expense which the City can deduct from any amounts due Contractor. City at its sole discretion may withhold any payment otherwise due Contractor until completion and final settlement of the Work covered by the notice of default.

#### **2.5.2 Termination without Cause**

City may also terminate the Contract for convenience if in the best interests of City upon thirty (30) calendar days' notice in advance. In such event, Contractor shall be paid for

all substantiated direct costs of materials furnished and Work performed up to the date of termination any additional compensation that City deems reasonable.

### 2.5.3 Termination for Lack of Appropriation

This Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.

Upon receipt of a notice of termination, Contractor shall: a) stop all Work unless directed otherwise; b) take such action to protect materials from damage; c) notify all subcontractors and suppliers that Contract is terminated; d) provide City with inventory list of materials previously produced, purchased or ordered and not yet used in the Work; e) dispose of all materials not used on the Work as directed by City; f) if directed by City, assign all rights and interests of Contractor under subcontracts or orders for the project; g) furnish any required documentation; and h) take any other actions as City may direct.

## 3. **CONTRACTOR'S RESPONSIBILITIES**

### 3.1 ***Responsibility for Damage; Indemnification***

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.

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense

arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

### **3.2 Insurance**

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

### **3.3 Payment of Taxes**

#### **3.3.1 Taxes Included**

The lump sum and rates set forth in **Exhibit A** 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.

#### **3.3.2 Business Tax**

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.

### **3.4 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 Work 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](#).

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.

### **3.5 California Labor Code Requirements**

- A. Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Work is being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- B. If the Work is being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Work must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

- C. This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. Pursuant to the requirements of section 1860 of the California Labor Code, Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:
- "I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- E. Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

### **3.6 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 Contractor is in addition to any warranties or guarantees required or provided by the manufacturer or supplier.

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 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 any performance bond.

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.

### **3.7 Independent Contractor Status**

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

### **3.8 Compliance with Laws**

All Work performed by Contractor under this Contract shall be in accordance with applicable federal, state and local requirements, including, but not limited to environmental laws and laws regarding disposal of hazardous wastes.

### **3.9 Noncollusion Declaration**

By executing this Contract, Contractor declares that only persons or parties interested in this Contract are those named in Contractor's bid or proposal and that such bid or proposal was not made in the interest of or on behalf of any undisclosed person, firm or organization; that the bid or proposal was genuine and not collusive or sham; that the signatory to this Contract has not directly or indirectly induced or solicited others to put in a sham bid or proposal, or to refrain from bidding or proposing; and that the signatory to this Contract has not in any manner sought by collusion to secure for itself an advantage over other potential proposers.

### **3.10 Conflicts of Interest**

Contractor covenants and declares that other than this Contract, it has no holdings or interests within the City nor business holdings or agreements with any official, employee or representative of City and shall disclose any such holdings or interests to City in writing.

### **3.11 Discrimination Prohibited**

Contractor covenants and agrees that in performing the Work required under this Contract, Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.



### **3.12 Bonds (Required for Contract Prices \$25,000 and Greater)**

#### **3.12.1 Payment Bond**

☐ Required / ☒ Not Required

If required for this Contract, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Total Compensation, and which conforms with the requirements of Civil Code section 9550 et seq., as may be amended from time to time.

#### **3.12.2 Performance Bond**

☐ Required / ☒ Not Required

If required for this Contract, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Total Compensation to guarantee the faithful performance of the Work.

#### **3.12.3 Bond Provisions**

Any and all bonds required for this Contract shall be in a form acceptable to the City Attorney. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared bankrupt or becomes insolvent or it's right to do business is terminated in any state where any part of the work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein. 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.

### **3.13 City Labor Requirements**

- A. As of the Effective Date, compliance with the City's living wage ordinance is ☒ required / ☐ not required for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws. In the event that compliance with the Living Wage Ordinance is not required, the Contractor may still be required to comply with the City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.



- B. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.
- C. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.
- D. Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.20 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### 4. GENERAL PROVISIONS

##### 4.1 *Applicable Law*

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

##### 4.2 *Assignment and Subcontracting*

Neither this Contract nor any interest herein nor any claim hereunder may be assigned or subcontracted by Contractor either voluntarily or by operation of law, without the prior written consent of City. No such consent shall relieve Contractor of its obligations to comply fully with the requirements of this Contract.

#### 4.3 Records

Contractor will permit City to audit, examine, and make copies of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract.

#### 4.4 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.

#### 4.5 Notices

##### 4.5.1 Communications Relating to Daily Activities

All communications relating to the day to day activities of the work and invoices shall be addressed to the **Joseph Aguilera** and **Eric Hage** for the Contractor:

CITY	CONTRACTOR
Joseph Aguilera, Public Works Operations and Facilities Manager Phone No.: 510-853-1140 E-Mail: jaguilera@emeryville.org	Eric Hage Phone No.: 510-426-0255 E-Mail: Erich@rubiconprograms.org

##### 4.5.2 Official Notices

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

CITY	CONTRACTOR
Andrew Clough, Public Works Director 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-596-4341 E-Mail: aclough@emeryville.org  <i>with a copy to:</i> Joseph Aguilera 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-853-1140 E-Mail: jaguilera@emeryville.org	Lourdes Haro, Rubicon Ent. dba Rubicon Landscape 1950 Wright Avenue Richmond, CA 94804 Phone No.: 510-412-1779 E-Mail: Lourdes@rubiconprograms.org

#### **4.6 No Personal Liability**

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

#### **4.7 Entire Agreement**

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

#### **4.8 Successors and Assigns**

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

#### **4.9 Severability**

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

#### **4.10 Counterparts**

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own

telecopied or scanned signature and shall accept the telecopied or scanned signature of the other Party to this Contract.

#### **4.11 No Third-Party Beneficiaries**

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

#### **4.12 Non-Exclusivity**

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

#### **4.13 Other Requirements**

This Contract ☒ **has** / ☐ **does not have** additional requirements set forth in an **Exhibit C**. If an **Exhibit C** is attached, then due to the nature of the Work, or due to this Work being funded, in whole or in part, by a third party, Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, the more stringent requirement shall control.

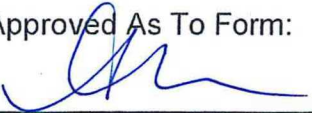
*SIGNATURES ON FOLLOWING PAGE*



**5. SIGNATURE PAGE TO MAINTENANCE SERVICES CONTRACT**

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

Approved As To Form:

  
Asst. City Attorney

Dated:

\_\_\_\_\_, 2019

**CITY OF EMERYVILLE**

\_\_\_\_\_  
Christine S. Daniel, City Manager

Dated:

JUNE 24, 2019

Rubicon Ent. dba Rubicon Landscape

 (Signature)  
LOURDES HARO, GENERAL MANAGER