

SAMPLE CONTRACT

This Contract is made and entered into this day of _____, 201__, by and between CITY OF EMERYVILLE, a municipal corporation ("**City**") and **American Civil Constructors Inc.** ("**Contractor**").

W I T N E S S E T H:

WHEREAS, by Resolution No. _____, the City Council of the City of Emeryville has authorized the Director of Public Works to solicit public bids for **Powell Street Overhead Joint Seal Replacement and Deck Seal; Project No. EPW-17-106** (the "**Project**"); and

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

WHEREAS, Contractor submitted the lowest responsible bid; and

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

NOW, THEREFORE, the parties mutually agree as follows:

1. Contract Documents

The following documents, including their respective exhibits and addenda (collectively "**Contract Documents**"), are by this reference incorporated in and made a part of this Contract in the following order of precedence:

- a. Contract and Subsequent Amendments to this Contract (If Issued)
- b. Project Plans, Specifications, and Contract Drawings for **Powell Street Overhead Joint Seal Replacement and Deck Seal; Project No. EPW-17-106**
- c. Addenda to Invitation for Bid (If Issued)
- d. State of California Department of Transportation Standard Plans (2015)
- e. State of California Department of Transportation Standard Specifications (2015)

2. Scope of Work

In conformance with the Contract Documents, Contractor will furnish, all labor, materials, equipment, incidentals, transportation and disposal for services required in order to perform and complete the Project.

3. Price

The total amount to be paid under this Contract for all of the work set forth in Section 2 above is not to exceed **TWO HUNDRED AND FORTY NINE THOUSAND FIVE HUNDRED AND**

FORTY FIVE Dollars (\$249,545), ("Total Contract Price"). This price includes all costs for labor, materials, tools, equipment, services, warranty, taxes, insurance, overhead, profit and all other costs necessary to perform the work in accordance with this Contract.

4. Time for Completion

After the Contract has been executed by City, Contractor shall begin work within **seven (7) calendar days** after the effective date of the Notice to Proceed issued by City and shall diligently prosecute the work to completion within **twenty (20) working days** from the effective date of the Notice to Proceed. Liquidated damages, if any, will be applied in accordance with the Standard Specifications at a daily rate of \$800.

5. Indemnification

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

6. Insurance

6.1 General Liability

Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than **two million dollars (\$2,000,000) per occurrence** for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability and coverage for explosion, collapse and underground property damage hazards. If a general aggregate

limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice the required occurrence limit**. Contractor's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. An endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37, is also required.

6.2 Auto Liability

Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01, or the exact equivalent, with a limit of no less than **two million dollars (\$2,000,000) per accident**.

6.3 Workers' Compensation

Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least **one million dollars (\$1,000,000)**. Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

7. 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.

8. Notices

Any notice required to be given by this Contract will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

City

City of Emeryville
Attn: Michael Roberts
1333 Park Ave
Emeryville, CA 94608

Contractor

American Civil Contractors Inc.
2990 Bay Vista Court, Suite D
Benicia, CA 94510

9. Entire Contract

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

10. Authority to Contract

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

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

CITY OF EMERYVILLE

Christine Daniel, City Manager

Approved as to form:



Asst. _____
City Attorney

Contractor

Firm Name: _____

Address: _____

Telephone: _____

Fax No: _____

Email Address: _____

SIGN HERE >>>

by: _____

its: _____