

RESOLUTION NO. 19-136

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager Enter Into A License Agreement With The East Oakland Community Project (EOCP) For Real Property Located At 4300 San Pablo Avenue, For Use As A Temporary Emergency Family Shelter For A Period Of Up To Twenty-Four Months; And To Sign All Relevant And Necessary Documents Pertaining To The License Agreement (CEQA Determination: Exempt Pursuant To California Government Code Section 8693.4(a)(4) And State CEQA Guidelines Sections 15269(c), 15301, 15303, 15332, And 15061(b)(3))

WHEREAS, the crisis of homelessness affects every area of Alameda County including Emeryville; and

WHEREAS, on October 30, 2018 the City Council of the City of Emeryville adopted Resolution No. 18-156 declaring a Shelter Crisis pursuant to Senate Bill 850 (Chapter 48, Statutes of 2018 and Government Code § 8698.2) and authorizing participation in the Homeless Emergency Aid Program (HEAP); and

WHEREAS, the cities of Emeryville and Oakland have partnered on a number of projects to provide shelter and services to unhoused residents of the cities including the Family Front Door, the year-round shelter at St. Vincent DePaul, and the community cabins project; and

WHEREAS, the East Oakland Community Project (EOCP) has a lengthy and successful history operating shelter and transitional housing facilities for families in the East Bay and has capacity to operate a temporary emergency shelter for families at the City of Emeryville's vacant, former temporary recreation center at 4300 San Pablo; and

WHEREAS, the Planning Commission approved a conditional use permit, design review, and exception to standards for a Temporary Family Emergency Shelter at 4300 San Pablo Avenue on August 22, 2019 (Planning Commission Resolution No. UPDR19-002); now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby finds that the project is exempt from the California Environmental Quality Act (CEQA) under California Government Code Section 8698.4(a)(4), which applies to actions taken by a City that has declared a shelter crisis to encumber land owned by the City for a homeless shelter; State CEQA Guidelines Section 15269(c), which applies to specific actions necessary to prevent or mitigate an emergency; State CEQA Guidelines Section 15301, which applies to minor alteration of existing structures involving negligible or no expansion of use; State CEQA Guidelines Section 15303, which applies to conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure; State CEQA Guidelines Section 15332, which applies to in-fill development projects; and the "general rule" at State CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to enter into a License Agreement with East Oakland Community Project (EOCP) in substantially the form set forth in Attachment A for real property located at 4300 San Pablo Avenue for use as a Temporary Emergency Family Shelter.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 17, 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>	


MAYOR

ATTEST:

APPROVED AS TO FORM:


FOR CITY CLERK


CITY ATTORNEY

EMERGENCY FAMILY SHELTER LICENSE

THIS EMERGENCY FAMILY SHELTER LICENSE (“**Agreement**”) is entered into as of this _____ day of _____, 2019 (“**Effective Date**”) by and between the City of Emeryville, a California municipal corporation (“**City**”), and East Oakland Community Project, a California 501(c)(3) corporation (“**Licensee**”). City and Licensee are sometimes hereinafter referred to individually as “**Party**” and collectively as the “**Parties**.”

RECITALS

A. On October 30, 2018, the City Council adopted City Council Resolution No. 18-156, declaring a shelter crisis pursuant to Government Code § 8698.2.

B. Pursuant to Government Code section 8698.2, the City may allow persons unable to obtain housing to occupy designated public facilities during the duration of the state of emergency.

C. The City owns real property commonly referred to as 4300 San Pablo Avenue, Emeryville, CA 94608, and is described in Exhibit A (the “**Property**”). The Property was previously used as a recreational center but is currently vacant.

D. The City also owns real property commonly referred to as the City Hall Parking Lot, located behind City Hall at 1333 Park Avenue, Emeryville, CA, and is described in Exhibit B (the “**City Hall Parking Lot**”). The City Hall Parking Lot is subject to the Grant Reciprocal Easement dated June 14, 1999 between the Besler Building Owners Association, Inc, and the City of Emeryville Redevelopment Agency (predecessor-in-interest to the City), recorded as Document No. 99221283 in the Official Records of Alameda County,

E. On August 22, 2019, the City Planning Commission adopted Resolution No. UPDR19-002, which approves a temporary emergency shelter for families, and office space to provide support services to individuals experiencing homelessness (“**Project**”) at the Property, subject to certain conditions, and which finds that the Project is exempt from environmental review under the California Environmental Quality Act (“**Project Approval**”).

F. Licensee is a multi-service, 501(c)(3) nonprofit, offering emergency and transitional housing in Alameda County.

G. The City desires to provide emergency shelter and support services at the Property consistent with the Project Approval.

H. The City finds that Licensee is qualified to oversee the construction of, maintain and operate the Project, consistent with the Project Approval at the Property, and the public interest is served by entering into this Agreement.

AGREEMENT

1. Incorporation of Recitals. The above recitals are true and correct and are hereby incorporated in this Agreement by reference.

2. Encroachment Permission.

a. Permission. City hereby provides to Licensee permission to encroach upon the Property, for the purpose of installing the Improvements (defined below) on the Property and using the Property as described herein, subject to the limitations set forth herein and Licensee's fulfillment and ongoing compliance with the terms and conditions set forth herein.

b. Emergency. In the event of an emergency, if City requires the use of the Property or a portion thereof during the term of a License (see sections 3 and 7) to respond to an emergency, City shall provide Licensee such notice as reasonably possible for unplanned emergency City purposes, and Licensee thereafter shall not cause any unreasonable delay or interference with City's access to or use of the Property. Once the City no longer requires the use of the Property to respond to such emergency, the City shall allow Licensee to resume use of the Property as outlined herein. The terms governing City's use of the Property in this Section 2(b) shall apply to the grant of licenses to Licensee.

3. Authorized Uses; Grant of Licenses. Licensee is hereby granted exclusive and non-revocable licenses to use the Property for the following purposes (which are individually referred to generically as "**License**", and collectively referred to as "**Licenses**"), along with their associated improvements, pursuant to the terms and conditions in this Agreement:

a. Parking License. Subject to the Grant Reciprocal Easement dated June 14, 1999 between the Besler Building Owners Association, Inc, and the City of Emeryville Redevelopment Agency (predecessor-in-interest to the City), recorded as Document No. 99221283 in the Official Records of Alameda County, which is incorporated by reference, use of four (4) parking spaces at the City Hall Parking Lot by Licensee's employees, agents, invitees or volunteers (collectively referred to as "**Licensee Invitees**") for parking of a personal vehicle of a Licensee Invitee. Use of such parking spaces are subject to availability of parking spaces, and Licensee Invitees shall not park in any space marked "Besler" at any time. Prior to any Licensee Invitee parking a vehicle at the City Hall Parking Lot pursuant to this License, Licensee shall provide the make, model and license plate number of the vehicle to be parked at the City Hall Parking Lot to the City Public Works Director.

b. Construction License. Uses and activities consistent with modifying the Property to make it habitable, which includes installation of a shower truck, modification of ingress and egress, modification of the fire system, and other activities required by the Project Approval or other permits issued related to the Project and undertaken by Licensee.

c. Shelter License. Uses and activities consistent with the operation and maintenance of the Project, subject to the Project Approval, and any other governmental permits related to the Project.

4. Authorized Improvements.

a. Improvements. The improvements authorized to be installed on the Property pursuant to this Agreement related to the License shall include but not be limited to improvements to allow for habitability at the Property (e.g., installation of shower truck, additional windows, roof

fans) (collectively, the “**Improvements**”). The right of Licensee to install, maintain, and use the Improvements are subject to the following limitations:

b. Permits. Licensee obtaining all applicable permits, including an encroachment permit (if required by law in addition to the licenses and permissions granted by this Agreement), and payment of appropriate fees.

c. Maintenance. Licensee shall install and maintain, at its sole cost and expense, the Improvements in strict compliance with Project Approval, any permits and applicable law.

d. Construction Schedule. A schedule of construction activities for the Improvements will be provided to and approved by the City Manager, prior to the commencement of any construction work on the Improvements within the Property. All Improvements shall be open and subject to inspection by City as required by applicable laws, regulations, and permits.

e. Alteration to Improvements. Licensee shall not alter, replace, or otherwise change the Improvements without consent from the City Manager and complying with the terms of the approved applicable permits, laws and regulations.

5. Consideration. Licensee shall pay City One Dollar (\$1.00) per year, payable in advance on the Effective Date and each anniversary thereof.

6. No Conveyance of Interest in Property. Nothing in this Agreement, including the permission to install the Improvements, shall be interpreted as, or otherwise be deemed to be, a transfer or conveyance of any interest in the Property whatsoever between the City and Licensee.

7. Term. This Agreement, and the Licenses granted hereunder, shall commence on the Effective Date and automatically terminate on September 22, 2021, unless the term is extended by the Parties in writing. The City Manager may extend the term for up to one year, provided such extension is consistent with the Project Approval, as they exist or may be amended. Sections 9, 14, and 16 survive termination of this Agreement.

8. Scope of Licenses; Conditions.

In addition to the other terms and conditions set forth herein, the Licenses provided for herein shall be subject to the following:

a. The Licenses shall include, and shall be limited to, the right and privilege of Licensee to use the Property and City Hall Parking Lot for the exercise of the purposes herein described.

b. For the Construction License and Shelter License provided herein, a non-revocable, exclusive, non-transferrable (except as set forth in Sections 2.b and 11) right and privilege of Licensee and Licensee Invitees. For the Parking License provided herein is a revocable, non-exclusive, non-transferrable right and privilege of Licensee and Licensee Invitees.

c. Licensees' use and activities on the Property are in compliance with the Project Approval, permits and all other applicable laws and regulations.

d. All activities on the Property must be compliant with the City's noise ordinance, codified as Chapter 13 of Title 5 of the Emeryville Municipal Code.

e. Licensee shall keep the Property in a clean, safe and orderly manner at all times at its sole cost and expense. This condition includes, but is not limited to, abating all graffiti within seventy-two (72) hours of Licensee receiving notice, maintaining the perimeter fencing in good working order at all times, and repairing any damage to the perimeter fencing within seventy-two (72) hours of notice of damage to the perimeter fencing.

f. No hazardous materials shall be handled at any time on the Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon the Property due to Licensee's use and occupancy of the Property, then Licensee, at its sole cost, shall clean all affected property to the satisfaction of the City and any governmental body with jurisdiction.

g. Any mechanic's liens filed against the Property on account of the work performed by Licensee hereunder shall be promptly cured by Licensee's payment thereof and the recording of applicable release of mechanic's Liens, or Licensee shall post a statutory mechanic's lien release bond in lieu thereof within seven (7) days after the filing of each such mechanic's lien.

9. Waiver and Release. Licensee, in perpetuity, expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Licensee may now or hereafter have against City, and its officials, officers, employees, and agents, whether known or unknown, with respect to liability for any damage, death or bodily injury arising from Licensee's use of the Property and City Hall Parking Lot unless such damage or loss is caused by the sole active negligence or willful misconduct of City. As a material part of City's decision to issue this Agreement, Licensee hereby assumes all risk of entering and using the Property and City Hall Parking Lot, and all risk of damage to the Improvements in, upon, or about the Property arising, from any cause attributable to City's exercising its rights hereunder, and Licensee hereby waives all claims in respect thereto against City, except if caused by the sole active negligence or willful misconduct of City. Licensee expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Licensee may now or hereafter have against City, and its officials, officers, employees, and agents, whether known or unknown, with respect to liability for revocation or termination of this Agreement and the Licenses granted hereunder by City (except to the extent caused by City's breach of this Agreement), including any and all right to claim, demand, or receive any further compensation for the offer which Licensee may be eligible to receive under the California Relocation Assistance Act (Government Code §7260, et seq.), the article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, et seq.), and/or the California Code of Regulations, Title 25 or other applicable local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively "**Compensatory Laws**"), including, but not limited to, the fair market value of the Licenses, severance damages, loss of goodwill, loss of profits, or relocation benefits and assistance, or claims for unreasonable pre-condemnation activities or inverse condemnation, or any other compensation, except if caused by the sole active negligence or willful misconduct of City.

LICENSEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“**SECTION 1542**”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, LICENSEE HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:

LICENSEE’s Initials

The waivers and releases by Licensee contained herein shall survive the term of this Agreement and shall be binding upon the assignees, transferees, and successors in interest of Licensee.

10. No Transfer of Rights. This Agreement and the Licenses, and all rights and obligations of Licensee with respect thereto, under the terms and conditions hereof, are personal to Licensee, and shall not be assigned or transferred by Licensee to any third party, unless approved by the City in advance and in writing, which approval shall not be unreasonably withheld, conditioned or delayed.

11. Default; Remedies.

a. Termination. The Agreement, and the Licenses provided hereunder, may be terminated upon any of the following events; provided that the City shall first provide Licensee with written notice of such event and a period of ten (10) calendar days after such written notice to cure, or to commence and diligently proceed to cure in the case of events which by their nature require more time to cure (“**Cure Period**”):

i. If, during the License Terms, Licensee fails to observe or perform any of the covenants, obligations or provisions of this Agreement or the Project Approval, which termination shall be effective after expiration of the Cure Period upon ten (10) calendar days written notice by the City to Licensee of such termination; or

ii. Upon any unapproved sale, lease, assignment or other transfer by Licensee, either directly or indirectly, of any of its interest in all or any portion of this Agreement, which termination shall be effective immediately upon any such sale, lease, assignment or transfer.

iii. The City determines Licensee is out of compliance with this Agreement or Project Approval, which termination shall be effective after expiration of the Cure Period upon ten (10) calendar days written notice by the City to Licensee of such termination.

iv. Licensee abandons the Project as contemplated by the Project Approval. Abandonment shall be deemed to occur when Licensee either fails to occupy the Property or vacates it for more than fifteen (15) consecutive days.

b. Effect of Termination. Upon any termination of this Agreement, for any reason, neither party shall have any rights or obligations hereunder, except as specifically provided for in this Agreement, and Licensee shall immediately discontinue using the Property.

c. Other Remedies. In addition to any other remedies at law or equity, the City Manager may issue an administrative citation pursuant to Chapter 7 of Title 1 of the Emeryville Municipal Code if Licensee fails to comply with the Project Approval, permit or other applicable law or regulation.

12. Maintenance, Improvement of the Property. City shall have no obligation to maintain, repair or improve the Property.

13. Recovery of Costs for Enforcement. The terms of this Agreement may be enforced by (a) City or its successors or assigns or (b) Licensee. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

14. Restoration of Property. Upon revocation or termination of the Agreement, upon demand of City Manager and at Licensee's own cost and expense, Licensee shall abandon the use of the Improvements and remove the Improvements and restore the Property to the same condition in which it existed prior to the placing of the Improvements, reasonable wear and tear excepted. In no event shall Licensee have any claim against the City for any of the costs of constructing, maintaining or removing the Improvements. In case Licensee shall fail to restore the Property as provided herein within one-hundred-twenty (120) calendar days after the effective date of revocation or termination, City may proceed with such work at the expense of Licensee or may assume title and ownership of the Improvements and any other property of Licensee located on or within the Property. No revocation hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Improvements are removed and the Property is restored as provided above.

15. Insurance. Prior to entering the Property or City Hall Parking Lot for any purpose, Licensee shall obtain and maintain, or cause to be maintained, in full force at Licensee's own expense, insurance as described in Exhibit C, attached hereto and incorporated by reference.

16. Indemnity. Licensee shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its respective officers, representatives, agents and employees (the "**City Parties**") from and against any and all third party suits or actions at law or in equity, claims, liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees), including, but not limited to, bodily injury, sickness, disease or death of any persons or damage to real or personal property, tangible or intangible (collectively "**Claims**") arising directly from the performance or failure to perform the provisions of this Agreement, use

of the Property by or acts, omissions, negligence or willful misconduct of Licensee, its agents, employees, volunteers, contractors, or subcontractors under this Agreement. Licensee's indemnity obligations under this Section 16 shall not extend to Claims to the extent occasioned by the active negligence or willful misconduct of City or City Parties. Licensee's indemnity obligations shall apply regardless of whether any insurance policies, or self-insurance maintained by the City has been determined to be applicable to such Claims, and regardless of whether or not City has prepared, supplied or approved of any specifications, drawings or plans for Improvements. This indemnification provision shall survive expiration or termination of this Agreement.

17. Prevailing Wage. Licensee is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("**Prevailing Wage Laws**"), which require compliance with prevailing wage rates, registration of contractors, certified payroll record requirements, hours of work requirements, apprenticeship standards and the performance of other requirements on "public works" and "maintenance" projects. If the Improvement work or maintenance 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 cost of the Improvement work is \$1,000 or more, Licensee agrees to fully comply with and to obligate its contractors and subcontractors to fully comply with such Prevailing Wage Laws, unless the work is otherwise exempt under applicable law. Licensee shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

18. Possessory Interest Tax. Pursuant to California Revenue and Taxation Code section 107.6, the property interest created by this Agreement may be subject to property taxation, and if created, Licensee shall be responsible for such tax, if levied.

19. No Discrimination. There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the Government Code, in the use, occupancy, tenure, or enjoyment of the Property, nor shall Licensee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Licensee Invitees at the Property.

20. Miscellaneous.

a. Amendments. The provisions of this Agreement may be amended by mutual written consent of both parties.

b. Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

LICENSEE: East Oakland Community Project
7515 International Blvd
Oakland, CA 94621
Attention: _____

CITY: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attn: City Manager

With a separate copy to:
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attn: City Attorney

Such notice shall be deemed made, if addressed to the party at its applicable address (1) when personally delivered, (2) forty-eight (48) hours after deposit in the U.S. Mail, first class, registered, certified and postage prepaid or (3) upon the date of delivery in person or by courier. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. Either party may change its address by written notice to the other in the manner set forth above.

c. Entire Understanding. This Agreement constitutes the entire understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

d. Invalidity. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

e. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

f. Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Alameda, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of

the foregoing waiver, Licensee expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

g. Exhibits. All exhibits attached hereto form material parts of this Agreement.

h. Time of the Essence. Time is of the essence in respect of all provisions of this Agreement in which a definite time for performance is specified.

i. Counterparts. This Agreement may be executed in any number of counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document and any counterpart signature pages may be detached and assembled to form a single original document.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO
EMERGENCY FAMILY SHELTER LICENSE
BETWEEN
CITY OF EMERYVILLE AND
EAST OAKLAND COMMUNIT PROJECT, a 501(c)(3) nonprofit**

“CITY”

**CITY OF EMERYVILLE,
a California municipal corporation**

By: _____
Christine Daniel
City Manager

Approved as to form:

By: _____
For Michael Guina
City Attorney

“LICENSEE”

**EAST OAKLAND COMMUNITY PROJECT,
a 501(c)(3) nonprofit;**

By: _____
Name _____
Its: _____

EXHIBIT A

The land referred to in this report is situated in the state of California, County of ALAMEDA, and is described as follows:

CITY OF EMERYVILLE

THE WESTERLY 100 FEET OF LOT 1, AND A PORTION OF THE WESTERLY 100 FEET OF LOT 2, BLOCK 1, MAP OF SUBDIVISIONS OF A PORTION OF PLOT #6 AS PER KELLERSBERGER'S SURVEY OF THE RANCHOS OF V. & D. PERALTA, FILED DECEMBER 16, 1876, MAP BOOK 2, PAGE 6, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF 43RD STREET WITH THE EASTERLY LINE OF SAN PABLO AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON SAID MAP; THENCE EASTERLY ALONG SAID NORTHERLY LINE OF SAID 43RD STREET, 100 FEET; THENCE AT RIGHT ANGLES NORTHERLY 104.25 FEET; THENCE AT A RIGHT ANGLES WESTERLY 100 FEET TO SAID EASTERLY LINE OF SAID SAN PABLO AVENUE; THENCE AT RIGHT ANGLES SOUTHERLY ALONG SAID EASTERLY LINE OF SAN PABLO AVENUE 104.25 FEET TO THE POINT OF COMMENCEMENT.

ASSESSOR'S PARCEL NO. 049-1079-014-01

EXHIBIT A

The land referred to in this report is situated in the state of California, County of ALAMEDA, and is described as follows:

TOWN OF EMERYVILLE

PARCEL 1:

BEING PORTIONS OF LOTS 2 AND 3, BLOCK 1, "MAP OF THE SUBDIVISION OF A PORTION OF PLOT 6, AS SHOWN ON KELLERSBERGER'S SURVEY OF THE RANCHOS OF V. & D. PERALTA," FILED DECEMBER 16, 1876, MAP BOOK 2, PAGE 6, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAN PABLO AVENUE DISTANT THEREON NORTHERLY 104.25 FEET FROM THE INTERSECTION THEREOF WITH THE NORTHERLY LINE OF 43RD STREET, AS SAID AVENUE AND STREET ARE SHOWN ON THE MAPS HEREIN REFERRED TO; THENCE NORTHERLY ALONG SAID EASTERLY LINE OF SAID SAN PABLO AVENUE, 51.75 FEET TO THE SOUTHERN LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED BY M. DOWN TO ALBERT HAMMARBERG AND GERTRUDE HAMMARBERG DATED JULY 16, 1945, RECORDED JULY 19, 1945, UNDER RECORDERS' SERIES #SS/45761; THENCE ALONG THE LAST MENTIONED LINE EASTERLY 100 FEET, THENCE SOUTHERLY PARALLEL WITH SAID EASTERN LINE OF SAN PABLO AVENUE 51.75 FEET; THENCE WESTERLY PARALLEL WITH SAID NORTHERN LINE OF 43RD STREET 100 FEET TO POINT OF BEGINNING.

PARCEL 2:

THE WESTERN 100 FEET OF LOT 4, BLOCK 1, "MAP OF THE SUBDIVISION OF A PORTION OF PLOT 6, AS SHOWN ON KELLERSBERGER'S SURVEY OF THE RANCHOS OF V. & D. PERALTA," FILED DECEMBER 16, 1876, ALAMEDA COUNTY RECORDS, MAP BOOK 2, PAGE 6.

ASSESSOR'S PARCEL NO. 049-1079-017-01

EXHIBIT "B"

CITY HALL PARKING LOT

Page 1 of 2

All that certain real property situated in the City of Emeryville, County of Alameda, State of California, described as follows:

PARCEL ONE:

Commencing at the point of intersection of the western line of Haven Street with the southern line of Park Avenue, as said street and avenue are shown on the "Map of Part of Plot 6, Kellersberger's Survey of Vicente & Domingo Peralta Rancho, property of J. S. Emery", etc., filed March 1, 1889, Book 19 at Page 68 of Maps, in the office of the County Recorder of Alameda County, and running thence along said western line of said Haven Street south $14^{\circ} 30'$ east 174 feet to the true point of commencement; thence, from said true point of commencement continuing along said westerly line of said Haven Street south $14^{\circ} 30'$ east 86.97 feet; thence southwesterly on the arc of a circle of 311.12 feet radius, deflecting to the right of westward, the chord of said arc bearing south $32^{\circ} 00' 35''$ west, a distance of 174.59 feet; thence north $14^{\circ} 30'$ west parallel with said western line of said Haven Street 205.56 feet being 174' southerly from said southern line of said Park Avenue; and thence parallel with said southern line of said Park Avenue north $75^{\circ} 30'$ east 125 feet to the true point of commencement.

Being a portion of Block 15, as said Block is shown on the "Map of Part of Plot 6, Kellersberger's Survey of Vicente and Domingo Peralta Rancho, property of J. S. Emery", etc., filed March 1, 1889, Book 19, at Page 68 of Maps, in the office of the County Recorder of Alameda County

EXHIBIT "B"

CITY HALL PARKING LOT

Page 2 of 2

PARCEL TWO:

REAL PROPERTY in the City of Emeryville, County of Alameda, State of California described as follows:

Commencing at a point on the Westerly line of Haven Street, distance thereon South $14^{\circ} 30'$ East 260.97 feet from the point of intersection of said Westerly line of said Haven Street with the Southerly line of Park Avenue as said Haven Street and said Park Avenue are laid down, delineated and so designated upon that certain map entitled "Map of Part of Plot 6" etc., hereinafter referred to; and running thence Southwesterly on the arc of a circle of 311.12 feet radius, deflecting to the right or Westward (the chord of said arc bearing South $32^{\circ} 00' 35''$ West) a distance of 174.59 feet to a point in the extension Southerly of the Easterly boundary line of Lot Number 14 in Block 15 as said Lot 14 and said Block Number 15 are laid down, delineated and so designated upon that certain map entitled "Map of Part of Plot 6" etc., hereinafter referred to; thence along said extension Southerly of said Easterly boundary line of said Lot Number 14, North $14^{\circ} 30'$ West 56/100 (0.56) feet to a point in said extension Southerly of said Easterly boundary line of said Lot Number 14 distant thereon South $14^{\circ} 30'$ East 104 feet from the most Southeasterly corner of said Lot Number 14; thence South $52^{\circ} 43'$ West 54.231 feet; thence North $75^{\circ} 30'$ East parallel with said Southerly line of said Park Avenue, 47.03 feet; thence Northeasterly on the arc of a circle of 328.12 feet radius, deflecting to the left or Northward (the chord of said arc bearing North $35^{\circ} 25' 30''$ East) a distance of 169.10 feet to said Westerly line of said Haven Street and thence North $14^{\circ} 30'$ West 31.37 feet to the point of commencement.

Being a portion of Block Number 15 as said block is laid down, delineated and so designated upon that certain map entitled, "Map of Part of Plot 6, Kellersberger's Survey of Vicente & Domingo Peralta Rancho, property of J. S. Emery" etc., filed March 1, 1889, Book 19 at Page 68 of Maps, in the Office of the County Recorder of said County of Alameda.

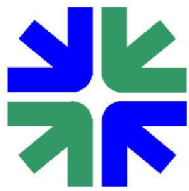


EXHIBIT C
Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **EAST OAKLAND COMMUNITY PROJECT**.

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 Minimum Scope of Insurance

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☐ **Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☒ **Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☐ **Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability

☐ **All Contract Types**

\$1,000,000.00 per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

☒ **Construction Specific**

\$2,000,000.00 per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

☒ **Automobile Liability**

\$2,000,000.00 per accident for bodily injury and property damage.

☐ **Professional Liability / Errors and Omissions**

\$2,000,000.00 per claim and aggregate.

☒ **Workers' Compensation and Employer's Liability**

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

☐ **Pollution Liability Insurance**

\$2,000,000.00 per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:



General Liability

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.



Automobile Liability

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.



Professional Liability Coverage

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.



Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

☐ **Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.