

## **RESOLUTION NO. 20-96**

### **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Professional Services Contract With Macks Craic DBA Mack5 For Construction Monitoring Of The Emeryville Art Center Project In An Amount Not To Exceed \$144,000 And Authorizing the City Manager To Execute Amendments To The Professional Services Contract**

**WHEREAS**, on November 13, 2018 the City Council adopted Resolution No. 18-160 authorizing the City Manager to negotiate an Exclusive Right to Negotiate Agreement with Orton Development, Inc. ("ODI") for the redevelopment of an existing structure at 4060 Hollis Street, Emeryville, CA into an Art Center ( Project); and

**WHEREAS**, ODI has formed 4060 Hollis, LLC as a single purpose entity for the purposes of entering into a Lease Disposition and Development Agreement and a related Ground Lease (the "LDDA"); to construct the Project and operate the Art Center and

**WHEREAS**, on August 27, 2020 the Emeryville Planning Commission approved an application for a Conditional Use Permit and Design Review permit for the Project (UPDR18-006) and adopted a resolution approving the General Plan Conformity Report for the Art Center Project; and

**WHEREAS**, the City and 4060 Hollis, LLC have negotiated a LDDA for the construction of the Project, and pursuant to Government Code section 37380, a Ground Lease (attached as Exhibit E to the LDDA) ("Ground Lease") to operate the Art Center; and

**WHEREAS**, the City desires construction monitoring services during the construction of the Project to ensure that the City meets its investment objectives by assuring quality construction and to ensure that the Project stays within schedule and budget; and

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to provide construction monitoring services to the City for the Project; and

**WHEREAS**, Macks Craic DBA Mack5 submitted a proposal on July 22, 2020; and

**WHEREAS**, the City has determined that Macks Craic DBA Mack5 is qualified by training and experience to render construction monitoring services for the Project; and

**WHEREAS**, the public interest will be served by this Contract; now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a Professional Services Contract with Macks Craic DBA Mack5 for construction monitoring services for the Art Center Project in substantial form as attached as Exhibit A to this resolution for an amount not to exceed \$144,000; and be it further

**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute amendments to the Professional Services Contract with Macks Craic

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Contract with Mack5 for Construction Monitoring of Emeryville Art Center Project  
City Council Meeting | September 1, 2020  
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DBA Mack5 as may be agreed to by the City Manager and approved as to form by the City Attorney that do not materially increase the obligations of the City thereunder.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 1, 2020 by the following vote:

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

DocuSigned by:  
  
49BC4DC144904C0...  
MAYOR

ATTEST:

APPROVED AS TO FORM:

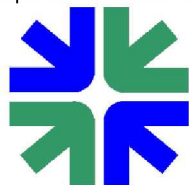


CITY CLERK

CITY ATTORNEY

**ATTACHMENT:**

Exhibit A: Professional Services Contract with Macks Craic DBA Mack5



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

**THIS PROFESSIONAL SERVICES CONTRACT** ("Contract") is effective as of \_\_\_\_\_ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **MACKS CRAIC INC., dba MACK5** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

### WITNESSETH THAT

**WHEREAS**, the City desires to engage Contractor for **Art Center Construction Monitoring**; 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 Contract; and

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

**WHEREAS**, the Contractor desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Contract; 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 set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

#### 1.2 Services

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

#### 1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **MARCH 30, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

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

REV 06/2020

**Exhibit A**

## **2. WORK CHANGES**

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

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### **2.2 *Additional Work Changes***

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

### **2.3 *City Manager Execution***

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

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

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

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

### **3.2 *Total Compensation Amount***

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED AND FORTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$144,000.00)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be 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 CONTRACTOR**

### **4.1 *Assignment of Contract***

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

### **4.2 *Responsibility of Contractor and Indemnification of City***

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.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

### **4.3 *Independent Contractor***

The Contractor 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 Contractor 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 contractors, 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 Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

#### **4.4 Insurance**

Contractor shall not commence Services 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.

#### **4.5 Records, Reports and Audits**

##### **4.5.1 Records**

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect 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. 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 Contract shall be clearly identified and readily accessible.

##### **4.5.2 Reports and Information**

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract 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 Contract. The Contractor 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 Contract.

#### **4.6 Conflicts of Interest**

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

#### **4.7 Confidentiality**

The Contractor 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 Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8 Discrimination Prohibited**

The Contractor covenants and agrees that in performing the Services required under this Contract, the 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.

#### **4.9 Licenses, Certifications and Permits**

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10 Key Personnel**

All of the individuals listed in Exhibit A are necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor 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 Contractor's obligations under this Contract and shall be grounds for termination.

#### **4.11 Authority to Contract**

The Contractor 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 Contractor to the terms of this Contract, 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 Contractor ("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 Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor 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 Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

#### **4.13 City Labor Requirements**

##### **4.13.1 Compliance**

At 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 <https://www.codepublishing.com/CA/Emeryville/#!/Eme>, 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.

##### **4.13.2 Applicability**

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 <https://www.codepublishing.com/CA/Emeryville/#!/Eme>. 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.

##### **4.13.3 Non-Compliance**

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



#### 4.13.4 Living Wage

#### 4.13.5 Minimum Wage and Paid Sick Leave

#### 4.14 California Labor Requirements

#### 4.14.1 Prevailing Wage Requirements

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If the Services are 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 Services 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.

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 Services, 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.

Pursuant to the requirements of section 1860 of the [https://leginfo.ca.gov/pub/07\\_01\\_01\\_bill\\_1801\\_0199\\_0000\\_0000.html](https://leginfo.ca.gov/pub/07_01_01_bill_1801_0199_0000_0000.html), 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."

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.

A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.

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- 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 Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor 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 Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

**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.

**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 Agreement. 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.

**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.

**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 Contract, 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 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.

## **10. 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.

## **11. BUSINESS TAX CERTIFICATE**

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, 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 and invoices shall be exchanged between **Emi Theriault** for the City and **Manil Bajracharya** for the Contractor:

<b>CITY</b>	<b>CONTRACTOR</b>
Emi Theriault, Project Manager/Community & Economic Development Coordinator Phone No: 510-596-4357 E-Mail : etheriault@emeryville.org	<b>Manil Bajracharya, ME,</b> <b>Principal/Senior Project Manager</b> Phone No: <b>510-595-3022</b> E-Mail : <b>manilb@mack5.com</b>

## **12.2 Official Notices**

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

<b>CITY</b>	<b>CONTRACTOR</b>
Charles Bryant, Community Development Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4361 E-Mail : cbryant@emeryville.org  <i>with a copy to:</i> Emi Theriault, Project Manager/Community & Economic Development Coordinator 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4357 E-Mail : etheriault@emeryville.org	<b>Manil Bajracharya, ME,</b> <b>Principal/Senior Project Manager</b> 1900 Powell Street, Suite 470 Emeryville, CA 94608 Phone No: <b>510-595-3022</b> E-Mail : <b>manilb@mack5.com</b>

## **13. 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, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

## **14. 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.

## **15. NON-EXCLUSIVITY**

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

## **16. ASSIGNMENT OR TRANSFER**

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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**17. WAIVER**

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**18. OTHER REQUIREMENTS**

Compliance with terms and conditions set forth in **Exhibit C** is ☐ **required** / ☒ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when 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, **Exhibit C** shall control.

*SIGNATURES ON FOLLOWING PAGE*

**City of Emeryville** | Professional Services Contract  
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**19. SIGNATURE PAGE TO PROFESSIONAL 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:

DocuSigned by:  
Andrea Viveshwara  
City Attorney

Dated:

**CITY OF EMERYVILLE**

\_\_\_\_\_

Christine S. Daniel, City Manager

Dated:

**MACKS CRAIC INC., dba MACK5**

8/10/2020

DocuSigned by:  
Manil Bajracharya (Signature)  
Manil Bajracharya, Principal/Senior Project Manager

Attach:  
W-9 Form



Attach:  
Business License Certificate



July 22, 2020

Chadrick Smalley  
 Economic Development and Housing Manager  
 City of Emeryville  
 133 Park Avenue, Emeryville, CA 94608

**Re: Owner's Representative Services – Emeryville Arts Center Project**

Dear Mr. Smalley:

We are pleased to submit this fee proposal for the Emeryville Arts Center project.

**Background**

City of Emeryville is in the process of finalizing the agreement with Orton Development, Inc. to convert the existing building on 4060-4062 Hollis Street in to an Arts Center. The project would convert the existing brick masonry building in to a modern facility with studios, galleries, a theatre, a café, courtyard, and indoor and outdoor spaces. The construction is anticipated to start in 4<sup>th</sup> quarter of 2020.

mack<sup>5</sup> Services:

For the purposes of this proposal, we are assuming eighteen (18) months of Construction

**Scope of Services**

Our proposed scope of services are as follows:

- Participate in weekly construction meetings
- Conduct weekly site visits to monitor work progress
- Bring to City and Developer's attention any issues
- Review construction schedule and 3 week look ahead.
- Review developer invoices for approval
- Review, negotiate change orders
- Assist with problem resolutions as needed
- Assist with financial close out of the project
- Represent City's interest during construction

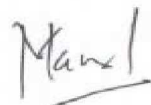
**Fee**

For the 18 months of construction, we would like to propose a budget fee of \$144,000 (\$8,000/month).

**Reimbursable Expenses:**

The cost of reproductions, deliveries and travel expenses (for travel outside the San Francisco Bay Area) will be charged at cost plus ten percent (10%).

We appreciate this opportunity and look forward to working with City of Emeryville again.



Manil Bajracharya, Principal Cell - 415 902 6900

**Key Personnel - Manil Bajracharya** Title: President; will be serving at the principal project manager and performing City-outreach and site visit/construction project monitoring

**Paul Beaner** Title: Senior project manager; will be serving as project management support including site visit/construction project monitoring.

Owner's Representative

Project Management

Construction Management

Cost Management

Cost Planning

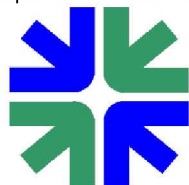
mack<sup>5</sup>

Headquarters  
 1900 Powell Street  
 Suite 470  
 Emeryville, CA 94608

Richmond Office  
 322 Harbour Way  
 Suite 16  
 Richmond, CA 94801

phone 510.595.3020  
 fax 510.595.1755





# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **MACKS CRAIC,. INC dba MACK5** .

#### 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**  
**\$1,000,000.00** 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:

**City of Emeryville** | Contract Insurance Requirements  
REV 07/2019☒ **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 CG20 37, 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.

*Attach:*  
*Insurance Certificate and Endorsements*

